AMENDING THE FAIR LABOR STANDARDS ACT OF 1938

HEARING

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 2634

TO AMEND SECTION 14(c)(3) OF THE FAIR LABOR STANDARDS ACT OF 1938, TO PERMIT THE EMPLOYMENT OF HANDICAPPED AND SEVERELY HANDICAPPED INDIVIDUALS IN COMMON AREAS, TO PERMIT THE EMPLOYMENT OF HANDICAPPED INDIVIDUALS IN DEMONSTRATION PROJECTS, AND FOR OTHER PURPOSES

AUGUST 11, 1982

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AMENDING THE FAIR LABOR STANDARDS ACT OF 1938

WEDNESDAY, AUGUST 11, 1982

U.S. SENATE,
SUBCOMMITTEE ON LABOR,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:34 a.m., in room 4232, Dirksen Senate Office Building, Senator Don Nickles (chairman of the subcommittee) presiding.

Present: Senators Nickles and Hawkins.

OPENING STATEMENT OF SENATOR NICKLES

Senator NICKLES. Good morning, Mr. Payne and Ms. Chasteen. We welcome you and appreciate your interest in today's hearing. In my opinion, it probably should have been held several years ago when it became apparent that certain provisions of section 14(c) of the Fair Labor Standards Act had actually become a hindrance to the employment and therapy of handicapped persons.

We introduced S. 2634 in June, amending section 14(c), which requires physical separation of persons employed under work activity center and sheltered workshop certificates issued by the Department of Labor. This requirement was enacted, as you know, in 1966 when conditions for employment of handicapped persons were far different than they are today.

Persons in work activity centers have been forbidden to work with more productive workers, and therefore are denied the models and also the stimulation which would only encourage greater personal development.

Since 1966, many sheltered workshops have developed special programs for more severely handicapped persons, particularly those who are mentally retarded. But what may have made sense 16 years ago is certainly not in the interests of handicapped persons today. This is due in large part to major changes in the position of handicapped persons in our society and to advances in our knowledge of what the handicapped can do.

The facilities at which we are looking today are nonprofit organizations established for the rehabilitation and employment of the handicapped. They must also compete in the general economy for contracts or sell their products in the open market.

There are dozens of work activity centers and sheltered workshops in Oklahoma, and about one-half a dozen of those facilities currently have both certificates. A number of other facilities are

also seeking dual certification, which are the facilities this legislation will address. The National Association of Rehabilitation Facilities estimates that 200,000 persons across the United States are served by facilities with dual certification. That organization is here to testify today, as are a number of other organizations concerned with this issue, including one from the State of Oklahoma.

This is one of many problems with section 14(c) which clearly demands change. I am confident that the Senate will reach a consensus on dealing with this problem, and I hope that we will be able to reach a general consensus and agreement about many of the other problems with section 14(c) during the next Congress.

I would like to insert for the record the statements by Senator Quayle and Senator Hawkins, which will be entered into the record as given. Also, let it be known that Senator Quayle is a cosponsor of this legislation, which I am most appreciative of.

[The following was received for the record:]

OPENING STATEMENT OF SENATOR QUAYLE

Senator QUAYLE. Mr. Chairman, I am pleased to be a cosponsor of S. 2634, the bill which you have introduced to allow work activity center clients and other sheltered workers to work together. S. 2634 amends the Fair Labor Standards Act to delete the requirement that separate therapeutic facilities be maintained for clients with severe handicaps. The Department of Labor has interpreted current law to require the physical separation of severely handicapped from those individuals whose handicap is mild. In addition to having separate facilities, they must have special therapeutic programs and special supervision. S. 2634 allows rehabilitation facilities the option to integrate clients with varying severity of disability if they believe that it will allow individuals the fullest opportunity to make the best vocational, social, and community adjustment possible.

This legislation is an important improvement to current law. The need for it is due, at least in part, to the advances we have made in our understanding of the many professions which physicially handicapped individuals are qualified to perform. In addition, many individuals with mental handicaps have been deinstitutionalized and placed with sheltered workshops and other rehabilitation centers. Consequently, the separation policy is contrary to section 504 of the Rehabilitation Act which prohibits discrimination against handicapped persons in federally funded programs. For some handicapped individuals, this separation policy has been shown to be counterproductive.

In a 1981 report made to the Office of Social Service Policy of HHS by the Interagency Coordinating Council, a recommendation was made that WAC and sheltered workshop clients be integrated on a selective basis. S. 2634 removes the restrictions in current law and thus lifts the impediment to the potential forward movement and progress of severely handicapped individuals. S. 2634 is also important because we so often have preconceived notions about what severely handicapped persons can and cannot do. Too often, those notions can become self-fulfilling prophecy. It has taken the Congress too long to recognize the barrier it created for handi-

capped individuals. People in work activity centers have been denied models and stimulation which would only encourage greater personal and social development.

In closing, I would like to reiterate my support for S. 2634 and commend Senator Nickles for bringing this legislation before the committee. As Senator Nickles is aware, I am very interested in training and in upgrading skills of all our workers. This legislation has as its purpose, taking previously unemployable workers integrating them into the workplace and providing opportunities for them to receive the benefits of their own skills and effort. We now have the opportunity to help the handicapped by providing flexibility in the act to benefit these individuals directly. I support S. 2634 and I urge my colleagues to do the same.

Opening Statement of Senator Hawkins

Senator Hawkins. Mr. Chairman, I want to commend you for introducing this legislation and holding hearings on what I believe is an inadvertant and obsolete provision of the Fair Labor Standards Act.

There has been a radical change in the opportunities available to the handicapped worker and the public's perception of the handicapped worker's abilities. Perhaps when the original legislation was enacted, there was a legitimate reason for the segregation of sheltered workshop employees for the work activity center employees, but those reasons do not exist today.

Today, with more and more handicapped individuals using the sheltered workshops as job preparation rather than permanent employment, it has necessitated that centers that were exclusively sheltered workshops expand to include work activity members as well. This merging of the two types of workers makes sense economically and socially. Unfortunately, the existence of this out-of-date requirement often results in the ridiculous effect of drawing a large yellow line down the middle of a room to physically segregate these individuals.

This is contrary to the objective of the centers, which is to rehabilitate and improve the employment opportunities of handicapped individuals, whether physically or mentally handicapped. We have made a great deal of progress in this regard in recent years, and we should continue in our efforts to remove laws and requirements that impede the handicapped individuals integration into society.

Senator Nickles. Mr. Walter Payne is executive director of the Brevard Achievement Center from Rockledge, Fla., Sharon Chasteen is executive director of A New Leaf, Inc., from Broken Arrow, Okla.

Mr. Payne, we welcome you and very much appreciate the assistance that you have given to myself and our committee in the development of this legislation. Please proceed.

STATEMENT OF WALTER J. PAYNE, EXECUTIVE DIRECTOR, BREVARD ACHIEVEMENT CENTER, ROCKLEDGE, FLA., REPRESENTING THE NATIONAL ASSOCIATION OF REHABILITATION FACILITIES, AND SHARON CHASTEEN, EXECUTIVE DIRECTOR, A NEW LEAF, INC., BROKEN ARROW, OKLA.

Mr. PAYNE. Thank you, Mr. Chairman. In addition to representing the achievement center, I am here today representing the National Association of Rehabilitation Facilities, called NARF.

I have submitted a more detailed statement for the record and I will summarize that statement at this time. We want to thank you, sir, on behalf of the NARF membership for introducing S. 2634, and for holding this hearing. Passage of this bill will be a positive step toward providing meaningful work to thousands of severely disabled persons.

NARF is the national voluntary association of nonprofit community rehabilitation facilities. NARF's membership now serves more than 400,000 handicapped individuals annually. Our facilities provide physical restoration, social adjustment, vocational development, sheltered employment, therapeutic work activities, skills training, and job placement for mentally and physically disabled persons.

NARF has been concerned for some time that the interpretation by the Solicitor of the Department of Labor that section 14(c) of the Fair Labor Standards Act requires separation of the severely disabled clients in work activity centers from working with higher functioning disabled workers in regular workshop programs. The bill introduced by you, Senator Nickles, would correct this inequity, and NARF fully supports it.

Currently, Department of Labor regulations define a work activity center as a workshop or a physically separated department of a workshop having an identifiable program, and separate supervision and records, planned and designed exclusively to provide therapeutic activities for the handicapped worker whose physical or mental impairment is so severe as to make his or her productive capacity inconsequential.

Since its enactment in 1938, the Fair Labor Standards Act has permitted the Secretary of Labor to issue certificates allowing employment of handicapped workers at less than the statutory minimum wage. The intent was to expand opportunities for training and employment for handicapped people, despite the handicaps that limit their ability to enter the competitive labor market.

Under section 14(c), pursuant to a certificate issued by the Department of Labor, a workshop must pay a handicapped worker the greater of 50 percent of the statutory minimum wage or a wage commensurate with that of a nonhandicapped worker doing the same type, quality, and quantity of work.

One of the four other certificates issued by DOL is for work activities centers where the clients are so severely handicapped that their productive capacity is deemed inconsequential. It is this type of certificate that we are addressing today.

Over the past decade, the number of clients served by workshop facilities have increased significantly. This increase is in part a result of State deinstitutionalization polices and indicates progress

in the placement of handicapped people. The number of work activity centers has increased from 513 in 1968 to 3,656 in 1981, while regular workshops have increased from 686 to 1,854.

With this unprecedented growth in the number of severely handicapped clients and work activity centers, many workshop managers and rehabilitation professionals have questioned the validity of the Department of Labor requirement for physical separation.

Mainstreaming severely disabled persons into jobs, education, and communities has become a widely accepted social policy. Existing Department of Labor regulations, in effect, prevent clients in work activity programs from working with other handicapped people. This means that there have to be artificial barriers, both physical and psychological, between programs. Programs have to be in separate buildings, in separate areas, or at separate tables.

Quite often, similar work is being performed in both programs, except for the fact that persons able to produce at a higher rate are in the regular workshop rather than in work activities. This separation prevents mainstreaming and the benefit of role models. It has prevented socialization in a work setting between the lower and higher functioning disabled persons.

Separation further tends to stigmatize those persons in work activities centers. Since 1978 NARF has urged the Department of Labor to revise its regulations and remove the requirement for separation. Although the Department of Labor is sympathetic to NARF's concerns, the Solicitor of the Department of Labor has consistently held that section 14(c) of the Fair Labor Standards Act requires physical separation.

The bill under consideration would change the language in section 14(c)(3) only to the extent necessary to allow the Department of Labor to change its regulations requiring separation. It would substitute the word "individual" wherever "client" appears in section 14(c)(3), and substitute "work activities programs" for "work activities centers" in that paragraph.

The words "designed and planned exclusively" would be struck from subparagraph (B) so that it would read, "For purposes of this paragraph, the term 'work activities programs' means programs which provide therapeutic activities for individuals whose physical or mental impairments are so severe as to make their productive capacity inconsequential."

The language of Senator Nickles' bill would allow workshops to integrate clients who are now segregated into work activities with other disabled workers and clients. It is important to note that the language is permissive. The workshop will have the option on whether or not to integrate.

If S. 2634 is enacted, workshops will be able to increase the number of people they can serve, expand the number, variety and complexity of jobs that can be made available to severely handicapped persons, and provide work in a setting that is conducive to increased productivity and functioning leading to increased placement in the private business sector.

At the facility that I direct in Florida, we could serve more disabled persons if the requirement for separation of clients did not exist. We are a work activities center. We provide service to 130

clients daily and more than 250 annually. We are accredited by the Commission on Accreditation of Rehabilitation Facilities for the maximum 3 years.

Our facility is presently not large enough to accommodate a separate regular workshop program. We could, however, serve additional clients if there were no physical separation requirement. We have higher functioning clients in our workshop under individual certificates, and we have found that their presence in the workshop has had a positive impact.

NARF is hopeful that the subcommittee will act expeditiously on S. 2634 and report it favorably to the full committee and to the floor of the Senate. NARF is especially appreciative of your efforts, Mr. Chairman, and will do anything that we can to insure that the bill is finally passed.

[The prepared statement of Mr. Payne with attachments follow:]

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Rockledge, Florida

Representing

The National Association of Rehabilitation Facilities

Before

The Subcommittee on Labor

The Labor and Human Resources Committee

August 11, 1982

Mr. Chairman:

I am Walter Payne, Executive Director of Brevard Achievement Center in Rockledge, Florida. I am here today representing the National Association of Rehabilitation Facilities (NARF).

I want to thank you on behalf of the NARF membership for introducing S.2634 and for holding this hearing. Passage of S.2634 will be a positive step in providing more meaningful work to thousands of severely disabled persons.

NARF is the national voluntary association of non-profit, community rehabilitation facilities. These facilities serve more than 400,000 mentally and physically disabled individuals annually. These facilities provide physical restoration, social adjustment, vocational development, sheltered employment, therapeutic work activities, skills training and job placement for mentally and physically disabled persons.

NARF has been concerned for some time that interpretation by the Department of Labor of Section 14(c) of the Fair Labor Standards Act unfairly segregates more severely disabled clients in work activities centers and does not allow these persons to work with higher functioning, disabled workers in regular workshop programs. S.2634 would correct this inequity and NARF fully supports it.

Background

Since its enactment in 1938, the Fair Labor Standards Act (FLSA) has included provisions authorizing the Secretary of Labor to issue certificates allowing employment of handicapped workers at less than the statutory minimum wage. The purpose of these provisions was to expand opportunities for training and employment for handicapped people when their handicap limits their ability to produce at levels that would allow them to work in the competitive labor market.

Original provisions of the FLSA required only that handicapped persons be paid based on their own productivity. In 1966, amendments to the FLSA established a system of certificates providing for special wage provisions for handicapped workers, or clients, in sheltered workshops. These provisions are commonly referred to as Section 14(c).

Under Section 14(c), a certified workshop must pay a handicapped worker the greater of 50% of the statutory minimum wage under Section 6 of the FLSA or a wage commensurate with the wage a non-handicapped person would receive for the same type, quality and quantity of work in the same vicinity. The commensurate wage is based on the individual person's productivity. There are four other certificates that may be obtained by a sheltered workshop that allow the workshop to pay less than 50% of the statutory minimum wage. They are:

1. Certificates for evaluation program involving actual productive work and the program must be approved by the state rehabilitation agency,
2. Certificates for training programs that involve productive work and also must be approved by the state rehabilitation agency,

3. Certificates for individuals whose handicap is so severe that they cannot earn the minimum wage set for that workshop (this certificate cannot be for less than 25% of the statutory minimum wage and the state rehabilitation must verify the severity of the individual's handicap), and,
4. Certificates for work activities centers where the clients are so severely handicapped that their productive capacity is inconsequential.

It is this last type of certificate that we are addressing today.

Over the past decade, the clients served by these types of facilities have become more severely handicapped. This reflects progress in the placement of handicapped people in competitive jobs and the policy of deinstitutionalization which has returned many people previously in state institutions to their communities. As a result of the discharge of large numbers of people from state institutions, the numbers of severely handicapped (particularly mentally retarded and emotionally disturbed) people being served by these community-based facilities has risen dramatically.

As pointed out by a 1967 Department of Labor study, the number of work activities centers has increased substantially. In fiscal year 1968, there were 513 workshops certified as work activities centers. The number of work activities centers increased to 3,656 by the end of fiscal year 1980. In contrast, the number of workshops covered by a regular program certificate increased from 668 to 1,854 during the same period. The number of clients in WACs grew proportionately during that time. The change in the client population has created a very different set of circumstances for facilities than existed when Section 14(c) was enacted in 1966.

The Department of Labor's Sheltered Workshop Study, Vol. II, published in 1979, indicates that most of the growth in client population in sheltered employment between 1973 and 1976 was by entry of mentally retarded people. Clients with developmental disabilities including mental retardation are the major population in workshops. Physically handicapped clients now constitute less than one-fifth of the total group.

Requirement for Physical Separation of Work Activities Centers

Deparment of Labor regulations (29 CFR 525) for Section 14(c) of the FLSA defines a work activities center as:

> ... a workshop, or a physically separated department of a workshop having an identifiable program, separate supervision and records planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential ... (emphasis added).

Compliance officers of DOL are specifically instructed to insure the WAC program is physically separate from other workshop programs and that there is separate supervision and separate records being kept on persons in work activities programs.

With the unprecedented growth in the number of WAC and the parallel growth in WAC clients, many workshop managers and other professionals began to question the requirement for physical separation. Since this requirement for WACs became effective in 1968, the concept of mainstreaming severely disabled persons into jobs, education and communities has become a widely accepted social policy. Sections 504 and 503 of the Rehabilitation Act of 1973 and the Education of All Handicapped Children Act codified this concept.

Substantial progress has been made in recent years in the development of techniques to help severely handicapped people participate more fully in the economy. In sheltered employment, creative management techniques have been developed to fit people with limited productive capacity into operations with those of higher functions. The models and peer support provided by association with high ability people are very beneficial to severely restricted people, particularly those who are severely retarded.

When the WAC programs were in the early stages, they were often separate and relatively small facilities. Increasingly WAC programs have been developed in larger rehabilitation facilities as one of several programs. In other instances WACs grew to a point where other programs could be sustained.

DOL regulations cited above prevented clients in the WAC programs from working with other handicapped persons. This meant that there had to be artificial barriers, both physical and psychological, between programs. Programs had to be in separate buildings or at separate tables. Quite often similar work was being performed in both programs except for the fact that persons were able to produce at a higher rate in the regular workshop program than in the WAC.

This separation prevented the more severely handicapped persons from having role models who were more productive. It has prevented the socialization in a work setting between the lower and higher functioning disabled persons. This is a very important process in readying these persons for possible employment in the private sector. Separation of the lower and higher functioning disabled persons also tends to stigmatize those persons in the work activities centers.

Two recent studies of sheltered workshops for the federal government have recommended that the separation requirement for WAC be abolished. A study of Training and Employment Services for Handicapped Individuals in Sheltered Workshops, prepared for the Assistant Secretary for Planning and Evaluation of the Department of Health and Human Services, said a major problem for work activities centers was regulations which require that, "... WAC clients be physically separated from other clients, thereby restricting their access to better work and thwarting upward mobility and other progress." The study recommended elimination of the requirement for physical separation.

A study of wages in sheltered workshops conducted as part of a broader study of minimum wage requirements in March, 1981, found that, "Some Fair Labor Standards Act rules, such as the requirement that WACs be physicially separated from other programs, can tend to limit worker productivity."

Attempts to Change Regulations

NARF has urged the Department of Labor since 1978 to revise its regulations to remove the artificial barriers between work activities centers and other sheltered workshop programs. Many meetings were held with Department of Labor officials and they were sympathetic to NARF's concerns. However, the solicitor of the Department of Labor has consistently held that Section 14(c) of the Fair Labor Standards Act requires the physical separation of work activities centers. Solicitors under both the Carter and Reagan administrations reached this conclusion.

The issue was also brought before the Interagency Coordinating Council. The

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Council was established by Section 507 of the Rehabilitation Act of 1973, as amended, to develop and implement agreements, policies and practices designed to maximize efforts, promote efficiency and eliminate conflict, competition, duplication and inconsistencies among the agencies represented on the Council. Those agencies are the Departments of Labor, Education, HHS and Justice, the Civil Service Commission, the Equal Employment Opportunities Commission and the Transportation Barriers Compliance Board. In December 1979, the Council expressed concern that there was an apparent conflict between the requirement for separation of work activities centers and Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against handicapped persons in federally-funded programs.

On December 11, 1979, the Council adopted a resolution which stated in part, "... the Department of Labor has taken this position that Section 14(c) of the FLSA prohibits integration, but the Department supports the policy that integration is in the best interest of handicapped people." Based on that resolution, the Council adopted a policy that recommended that Section 14(c) of the FLSA be amended to permit integration.

Proposed Statutory Change

S.2634 would change the language of Section 14(c)(3) of the FLSA only to the extent necessary to allow the Department of Labor to change its regulations requiring separation of work activities centers. It is a technical language change and would not otherwise affect the provisions of Section 14(c).

S.2634 would substitute the word "individual" whenever "client" appears in Section 14(c)(3) and substitute work activities "programs" for work activi-

ties "centers" in that subsection. The words "designed and planned exclusively" would be struck from subparagraph (B) so that it would read:

> (B) for purposes of this paragraph, the term 'work activities programs' means programs which provide therapeutic activities for individuals whose physical or mental impairments are so severe as to make their productive capacity inconsequential.

Effects of Change

The language of S.2634 would allow workshops to integrate clients who are now segregated into work activities centers with other disabled workers and clients. It is important to note that the language is permissive. The workshop will have the option of whether or not to integrate the WAC persons.

If S.2634 is enacted, workshops will be able to increase the number of people they can serve, expand the number, variety and complexity of jobs that can be made available to severely handicapped persons and those persons will be able to work in a setting where they will have a better opportunity to increase their productivity and their potential for placement into the private business sector.

Included with my testimony, I am submitting, for the record, a letter NARF received last year from the Woodlawn Center, a workshop in Logansport, Indiana. That workshop put all of its WAC clients on individual certificates so that the clients could work in the workshop with other less severely disabled clients. The workshop had to subsidize some clients in order to do this but space would be better utilized and some costs savings would be better realized. There were also benefits for the clients that had not been

anticipated. Duane Stuart, Vocational Services Director, said,

> Self esteem of the clients has improved. They no longer see themselves as non-productive, for them the change was a promotion and had a morale boosting effect.... The productivity of the former WAC clients has increased significantly to where few are subsidized.

At the facility I direct in Brevard County, Florida, we would be able to serve more disabled persons if there were no requirement for separation of a work activities center or program. Our program is currently a work activities center. We do not have a regular workshop program. Brevard Achievement Center serves 130 clients. It is the only workshop program in Brevard County. We are accredited for the three year maximum by the Commission on Accreditation of Rehabilitation Facilities.

Our facility is not large enough to accommodate a separate regular workshop program. We could, however, serve additional clients if there were no physical separation requirement. We have had as many as five higher functioning clients in our workshop under individual certificates and found that their presence in the workshop had a positive impact. The work activities clients had a positive role model to follow and the learning process from one client to another was most beneficial.

NARF is hopeful that the Subcommittee will act expeditiously on S.2634 and report it favorably to the full Committee and to the floor of the Senate. NARF is especially appreciative of your efforts, Mr. Chairman, and will do anything we can to help see the bill to final passage.

I have attached to this testimony several letters, memorandums and excerpts from studies cited that may be helpful to you and your staff. NARF would appreciate it if they would be included in the printing of the Subcommittee proceedings.

I will be glad to answer any questions you may have.

FINAL REPORT

TRAINING AND EMPLOYMENT SERVICES FOR HANDICAPPED INDIVIDUALS IN SHELTERED WORKSHOPS

Office of the Assistant Secretary
for Planning and Evaluation
U.S. Department of Health and Human Services
Room 416E, 200 Independence Avenue, SW
Washington, DC 20201
(202) 245-1799

Prepared by:

Claude W. Whitehead
Social Science Analyst
Office of Social Services Policy

March 1981

1. Evaluation--for clients entering the workshop and undergoing diagnosis, assessment and evaluation.
2. Training--for clients in a recognized training program.
3. Regular program workshop--for client/employees who have completed evaluation and training.
4. Individual Rates--for severely disabled workers in the regular workshop.
5. Work Activities Centers--for seriously impaired persons whose productive capacities are considered inconsequential.
6. Handicapped Worker Certifications--for persons unable to move into a regular workshop (not available) but capable of higher productivity than WAC clients.

Although the 1966 amendments were intended to set minimum earnings levels for handicapped workers in regular sheltered workshops, they had a secondary role of assuring that the most severely impaired individuals could be served: Congress established a floor of 50 percent of the FLSA minimum hourly rate in the regular workshop but concurrently provided five exceptions (the other programs). This complex legislation, implemented by even more complicated regulations (29 CFR Part 525) by DOL, produced an administrative nightmare for DOL compliance staff and sheltered workshop managers.

In addition to the multiple certificate program, the FLSA provided further protection for the handicapped worker by requiring that all workers be paid wages commensurate with their productivity compared to that of a nonhandicapped worker doing essentially the same quality and quantity of work. While this provision increased assurance of payment of a fair wage in all workshop programs, it has proven to be difficult to administer.

GOAL

The target in this paper is to develop a comprehensive wage policy proposal which will:

- Assure payment of fair and appropriate wages to handicapped clients and employees in sheltered workshops;
- Provide maximum opportunity for progress and upward mobility;
- Consider wage supplements when handicapped worker productivity limitations will not provide earning minimum wages; and
- Assure that the individual worker's needs and capacities are given appropriate consideration in assigning work and establishing wage rates.

POLICY PROBLEMS

The identification of major policy problems through the original TESPA Task Force, through Congressional hearings (1978, 1979) cited earlier and numerous national and state conferences was presented in the initial TESPA Progress Report (Whitehead, 1979). This report was used as a discussion paper in state validation studies conducted in 1979 and 1980, and seminar participants showed a high level of agreement.

In addition, a coalition of national organizations representing handicapped persons and sheltered workshops met regularly during 1980 to discuss wage problems. This group met three times with the DOL Assistant Secretary for Employment Standards and his staff to review policy problems. When problems relating to work activities centers could not be resolved by DOL administration, an appeal was presented to the Interagency Coordinating Committee for the Handicapped, an interdepartmental arbitration body established by the 1978 Rehabilitation Act amendments to address special problems. The National Association of Rehabilitation Facilities presented a written petition to the ICC which was prepared in collaboration with the DHHS Office of the Assistant Secretary for Planning and Evaluation and the Office for Civil Rights. Oral presentations were made at the November and December meetings of the ICC by DHHS/ASPE staff. The ICC responded by approving a resolution endorsing the DHHS and NARF position which called for reforms in the work activity center regulations. The DOL Employment Standards Administration has the recommended revisions under consideration. (March 1981)

The major problems on which there is substantial agreement are:

A. Complex and Restrictive Regulations

DOL regulations (29 CFR 525) are unnecessarily complex, thereby limiting the effectiveness and creating excessive work for both DOL staff and facility managers. The most problematic area is work activities centers (programs for persons with "inconsequential" productive capacity). Regulations require that WAC clients be physically separated from other clients, thereby restricting their access to better work and thwarting upward mobility and other progress. Additional restrictions of the WAC include the annual earnings or productivity criteria utilized in determining eligibility for WAC certificates.

B. Lack of Compliance with Regulations

Violations of DOL wage/hour regulations are a common problem. In some instances abuses seem to be intentional or at least the result of neglect. But most violations have been found to result from lack of technical knowledge regarding the wage requirements, while some result from the lack of appropriate applicable wage rate data to use in establishing wage systems.

C. Inadequate Training and Expertise

Sheltered workshops represent a unique employment enterprise unlike the profit-oriented businesses DOL compliance staff usually investigate. Many DOL staff lack the special training/knowledge necessary to review sheltered workshop performance and are confused by the dual client-employee status. (See section on Maximizing Employment Opportunities.) Sheltered workshop investigations tend to be either excessively precise or too superficial.

D. Wage Earnings are Inadequate

Many severely handicapped workers have such functional (productivity) limitations that they are unable to meet even the minimal standards of living. The financial structure of the workshop is often too limited to permit subsidizing the wages of such workers. Less than half of those workers receive income supplements from the Supplemental Security Income (SSI) program or the Social Security Disability Insurance (SSDI) program.

IMPLEMENTATION STRATEGIES

Improvement in the payment of wages to handicapped persons involved in training and employment programs in sheltered workshops involves action to revise the FLSA and the Section 14(c) regulations of DOL; improving the management of wage payment systems by workshops; and upgrading the skills of DOL compliance staff. All of these changes are related and essential to assuring fair treatment of handicapped workers.

A. Legislative and Regulatory Reform

1. Recommendation: Section 14(c) of the Fair Labor Standards Act should be amended to eliminate the six currently authorized certificates and substitute provision for a single certificate permitting payment of wages at less than the FLSA minimum rate established under Section 6 of the FLSA. The amendment should stipulate that such payment would be permissible at a level determined to be commensurate with rates paid to nonhandicapped workers in the vicinity performing essentially identical work..

Type of Action: Legislative

Level of Activity: Federal

Agency: Congress and DOL

Discussion. The sheltered employment provisions of the 1966 amendments to the FLSA have been proven to be ineffective as well as administratively difficult. This change would recognize the problem and establish a program which would substantially reduce administrative costs of the workshop and DOL. More important, it would permit better attention to assuring appropriate wages to handicapped workers.

The disadvantage of this program would be the elimination of the 50 percent wage guarantee now provided to workers in regular workshops, but the impact would be minimal because less than one-fifth of the workshop/client workers are in regular program workshops.

The advantages of this change to the handicapped worker would be that of having full access to all job and training opportunities in the workshop without restriction.

2. Recommendation: As an alternative to Recommendation #1, revise DOL regulations (29 CFR 525) to eliminate the physical separation requirement for Work Activities Centers. Also, increase the annual productivity/annual earnings ceflings criteria used in determining qualification for a WAC certificate to equate with 45-50 percent of the FLSA rate (or eliminate the criteria).

Type of Action: Regulation

Level of Activity: Federal

Agency: DOL/Employment Standards Administration

Discussion. There is overwhelming agreement that the WAC segregation requirement is restrictive to the rights of handicapped persons--even DOL/ESA staff agree. The Interagency Coordinating Committee for the Handicapped likewise supports this proposal (resolution of January 1981). The problem has major importance because two-thirds of the workshop clients are in WAC. The advantages of this change are described in Recommendation #1 above--removing restrictions to job access and upward mobility. The changes in the WAC regulations could permit elimination of three of the six current certificates--training, evaluation, and handicapped worker. It would retain the protection of the 50 percent floor for regular program workers.

The average annual earnings and productivity criteria should be eliminated because they tend to limit earnings of many otherwise more productive workers--persons capable of earning above the 25 percent level set by the criteria but not able to maintain earnings above the 50 percent level for the regular workshop.

Changes in the regulation may be the only available option of these two recommendations because of the limited prospect for Congressional changes to FLSA in this session.

B. Workshop Management Improvement

1. Recommendation: Sheltered workshops should establish procedures to assure that each handicapped person entering the workshop would have an individualized plan for training and employment services developed. (See section on Maximizing Employment Potential.)

Type of Action: Administrative

Level of Activity: Local

Agency: Sheltered Workshops and/or their Parent Organization

Discussion. Most clients referred to workshops by agencies administering federal/state funding are required to have Individualized Rehabilitation Plans, Individualized Habilitation Plans or Individualized Education Plans, but an increasing number of clients are referred by agencies not covered by the Individualized Plan requirement and others are self-referred and not covered. This action is designed to fill that void. Such plans have been found to be valuable to assuring appropriate services.

2. Recommendation: Regular periodic training programs should be provided to workshop managers and supervisors responsible for wage payment functions. This training should include techniques of time and motion studies, wage system development, and wage data collection and analysis.

Type of Action: Training initiation

Level of Activity: Federal, regional and state

Agency: DOL/Employment Standards Administration and RSA-funded Rehabilitation Workshops Training Programs

Discussion. This training has been initiated on a small scale by DOL/ESA but it should be continued and expanded. Workshop staff are recruited from a variety of sources, most of which are not likely to provide this training.

The training should reduce the incidence of wage payment violations and improve the chances for fair wage payment.

3. Recommendation: Sheltered workshops should adopt a "Code of Ethics" committing the facility to sound business practices, especially in regard to payment of fair and appropriate wages.

Type of Action: Administrative

Level of Activity: Local

Agency: Sheltered Workshops, Rehabilitation Facilities and similar organizations

Discussion. The adoption of such a commitment to services is vital to restoring public confidence in sheltered workshops. The process of considering such action could result in a productive self-evaluation by workshop administrators and their board of directors.

C. Upgrading DOL Compliance Officer Skills

1. Recommendation: Field DOL staff responsible for investigations and evaluations of sheltered workshops, including staff responsible for certificate approval, should be given special training so as to improve their expertise in sheltered employment and wage payment systems.

Type of Action: Administrative--training

Level of Activity: Federal--central and regional

Agency: DOL/Employment Standards Administration

Washington, D.C. 20210

OCT 7 1980

DRAFT

MEMORANDUM FOR: DONALD ELISBURG
Assistant Secretary

FROM: HENRY T. WHITE, JR.
Deputy Administrator

SUBJECT: Intermingling of work activities center workers with other handicapped workers

During the past decade the characteristics of the workforce employed in sheltered workshops have changed markedly. Whereas a sizeable majority of the workers at the beginning of the period consisted of the moderately handicapped who were relatively good producers, at present in excess of two-thirds of the workforce is severely handicapped with low-level productive abilities. These low-level producers are employed in work activities centers which are workshops or departments of workshops for "inconsequential" producers.

Several forces have been responsible for this change. Probably the most important have been the strong emphasis in federal legislation on providing services for the severely handicapped and the developing policy of deinstitutionalization which virtually all states have adopted. Significant numbers of the deinstitutionalized population have been placed in workshops. The heightened public awareness that severely impaired people, particularly the mentally retarded, can benefit from rehabilitation, including employment in workshops, has also played a significant role. The improved environment for placement of handicapped workers in competitive employment has allowed many moderately handicapped individuals to enter such employment resulting in fewer such placements in workshops.

In general, the employment scenario for the handicapped has improved considerably. Much of the progress has stemmed from an increased public recognition of the employment potential and special needs of handicapped workers. This increased awareness is evidenced by

the creation of nondiscrimination and affirmative action requirements at the federal, state and local levels. Sections 503 and 504 of the Rehabilitation Act of 1973 and Executive Order 11246 are but two examples of such mandates at the federal level.

It has become necessary that long standing policies and regulations governing employment of the handicapped be reexamined in light of the changed environment occupied by the handicapped population. It is apparent that the requirement that a work activities center be physically separated from the regular program of a workshop should be an area subjected to such reexamination.

The Department's sheltered workshop regulations issued pursuant to section 14(c) of the Fair Labor Standards Act (FLSA), require the physical separation of work activities center workers from other work programs in a workshop. This position is based on the language of section 14(c) of the FLSA and the legislative history of the 1966 Amendments to the FLSA. The FLSA defines a work activities center as a center "planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential." The argument for physical separation is further buttressed by the Conference Report on the Fair Labor Standards Amendments of 1966 which paraphrases section 14(c) and states:

> A "work activities center" means an establishment designed exclusively for workers whose physical or mental handicap is so severe as to make their productive capacity inconsequential /H.R. Report No. 2004, 89th Cong., 2nd Sess. 21 (1966)/. (Emphasis added.)

It is the Solicitor of Labor's view that section 14(c) mandates the physical separation of work activities center workers from those in regular workshop programs.

We feel that such a separation requirement, however well intentioned when enacted in 1966, may well prove detrimental to the welfare of the severely handicapped in today's environment.

Most workshop organizations, such as the National Association of Rehabilitation Facilities and Goodwill Industries of America, have strongly objected to physical separation, stating that such a requirement adversely impacts upon severely handicapped workers in the following ways:

- Separation of work programs impedes the efficiency of workshop programs reducing the level of services available to workers and the economic viability of workshop itself.

- Severely handicapped workers cannot be given a broad range of employment experience since in many cases such workers can only perform part of a job and it is not feasible to move work from one work area to another for this purpose.

- Segregation of severely handicapped workers in a work activity center denies them the opportunity to benefit from the faster pace role models represented by less handicapped workers.

- Severely handicapped workers are denied equal opportunity for both employment and social interaction as a result of the segregation.

- The physical separation of the severely handicapped tends to stigmatize them.

In addition, workshop organizations feel that the separation requirement for work activities centers is illegal in view of the requirements of section 504 of the Rehabilitation Act of 1973. Whether or not this view would prevail legally, the separation requirement is not in keeping with the spirit of that Act.

Not all interested parties view the separation issue in the same light. The National Industries for the Blind and the American Council of the Blind have opposed a change. Aside from the language of section 14(c) of the FLSA and it's legislative history mandating physical separation of work activity centers,

these groups feel that separation is important, citing the following arguments in support of that view:

> Earnings of more productive workers in workshops could be adversely affected by the slower work pace of the severely handicapped if work activities center workers were intermingled with regular workshop program workers.
>
> The severely handicapped presently in work activities centers would receive few therapeutic services if integrated into regular workshop programs where emphasis is more upon production than such services.
>
> The more productive workers who generally are physically handicapped would resent working with the work activities workers who are primarily mentally impaired.

On balance, it is our view that the right of the severely handicapped to employment free of segregation from less handicapped individuals is worthy of support.

The Solicitor of Labor feels that the statutory language and legislative history on the "separation" issue preclude a regulatory change that would permit intermingling of work activities center workers with those in regular workshop programs. In view of this, the only available option is revision of section 14(c) of the FLSA. We are in agreement with the position that the rehabilitation of the severely handicapped workers in work activities centers would be enhanced if the requirement for physical separation of such facilities were eliminated. To this end we would support legislation to amend section 14(c) of the Act.

WAGES IN SHELTERED EMPLOYMENT

Monroe Berkowitz
Principal Investigator

with

David Dean

Jeffrey Rubin

Stephen Sheehy

Monroe Berkowitz
1791 Middlebrook Road
Bound Brook, New Jersey 08805

March, 1981

Findings Related to Wages, Productivity, and Employment

The criteria a workshop must meet if it is to receive a certificate to pay subminimum wages effectively establishes a minimum wage in workshops (except for WACs). Thus the minimum wage for the economy will influence wages in sheltered workshops. The research by Christainsen, summarized in Chapter IV, suggests that the existence of a minimum wage has a positive impact on wages in sheltered employment. At the same time, higher wages may reduce the supply of hours worked for recipients of cash transfers and may also act to reduce the demand for workers in production-oriented shops.

Capital, managerial capacity and orientation, and use of nondisabled employees all contribute positively to the productivity, and in turn the wages, of impaired workers in sheltered workshops. Some Fair Labor Standard Act rules, such as the requirement that WACs be physically separated from other work programs, can tend to limit worker productivity.

Some workshops simply decide to pay, or are mandated by state law to pay, minimum wages or above. In these cases, subsidies, in the form of donations or the direct allocation of state funds, are necessary to bridge the gap between value of workshop output and the mandated wage bill. The failure to cover costs can be attributed to low worker productivity which may be the result of inefficient management practices or cumbersome state regulations.

While in principle, for some jobs, a piece-rate system will most closely link productivity with wages, difficulties and inequities tend to arise in determining the prevailing wage and in establishing a commensurate wage. We found great confusion among workshop managers about the appropriate firms and jobs to sample in order to determine the prevailing wage, wide variety in methods used to establish production standards and uncertainty as to how to account for different supervisory-labor ratios and other conditions of work.

98-285 O - 82 - 3

Civil Rights Division

Office of the Assistant Attorney General — Washington, D.C. 20530

January 13, 1980

MEMORANDUM FOR: The Interagency Council and Staff

FROM: James P. Turner
Chairman Designee
Interagency Coordinating Council

SUBJECT: 1980 Council Report and Sheltered Workshops

Attached is a printed copy of the Council's 1980 report to the President and Congress. In the event you would like additional copies, please contact Bob Dempsey (633-2374).

The unbound report was submitted to the President, the Vice President and the Speaker in December. The bound report is being resubmitted to the aforesaid and is being sent to the Chairmen and ranking minority members of the Senate Committee on Labor and Human Resources and the House Committee on Education and Labor and the Chairmen and all members of those Committees' relevant subcommittees. Additionally, the report will be sent to Federal departments and agencies and to a substantial number of consumer organizations and publications. We understand the Government Printing Office has published an additional 900 copies for public distribution and circulation to libraries.

At the last Council meeting on December 11, the following resolution was read:

> The Council has been concerned about an apparent conflict between the Fair Labor Standards Act (FLSA) regulatory requirement for physical separation of work activity center clients from sheltered workshop clients and Section 504 of the Rehabilitation Act of 1973 requiring recipients of federal funds to place handicapped people in the least restrictive environment commensurate with their needs.
>
> The Council has heard presentations on this issue from the Departments of Labor, Education, and Health and Human Services. The Council also has received letters from organizations concerned with sheltered workshops and work activity centers. The Department of Labor has taken the position that Section 14(c) of the FLSA prohibits integration, but the Department supports the policy that integration is in the best [illegible]
>
> In view of the above, the Council adopts the following policy position:
>
> "The Interagency Coordinating Council established under Section 507 of the Rehabilitation Act of 1973 as amended believes sheltered workshop and work activity center clients should be integrated on a permissive basis and recommends that Section 14(c) of the FLSA be amended to permit integration."

This resolution was not put to a vote because of the absence of a quorum. However, it was agreed at the meeting that the Staff would present the resolution to their respective principals for a vote which would then constitute the official position of the Council on this issue. I can now report that the members of the Council (including the Department of Labor) have approved the resolution. The resolution therefor states the position of the Council.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

March 12, 1980

The Honorable Drew S. Days III
Assistant Attorney General
Civil Rights Division
Department of Justice
10th and Pennsylvania Avenue N.W.
Washington, D.C. 20530

Dear Mr. Days:

In its February submission to the Interagency Coordinating Council (ICC), the Department of Labor (DOL) explores the relationship between sections of its regulation implementing the Fair Labor Standards Act (FLSA) and this Department's requirements under Section 504. Specifically, DOL concludes that its rules requiring the segregation of persons being trained in Work-Activities Centers do not conflict with the requirements of Section 504 that persons be served in the least separate setting appropriate for them.

As a result of professional and Congressional inquiries, the relationship between the two regulations has been under consideration within the Office for Civil Rights. Most recently, we have received a copy of a letter sent by Mr. James A. Cox, Jr., Executive Director of a rehabilitation facilities group, to Secretary of Labor Marshall (copy enclosed at Tab A). In that letter, Mr. Cox asserts that the segregation provisions of the DOL regulations conflict with the integration policy of this Department's Section 504 regulation.

We have addressed the issue in our response to Mr. Cox, a copy of which is also enclosed (Tab B). Specifically, on page two of our response we state our view that: "[N]either the DOL regulation issued under the FLSA, nor recipients which comply with them violate the provisions of the Department's regulation implementing Section 504." We have reached this conclusion because the Fair Labor Standards Act Amendments of 1966 (29 USC 214) provide that:

> "3(A) The Secretary may by regulations...provide for the employment of handicapped persons in work activities centers...

> (B) ... the term 'work activities centers' shall mean centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential." (Emphasis added)

We recognize that DOL has acted under this authority in promulgating its regulation.

However, while the DOL regulation does not violate Section 504, we believe that DOL's implementation is unduly restrictive and contrary to Congressional intent in enacting Section 504. The Section 504 regulations mandate that handicapped persons shall be given:

> "...equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person' (Emphasis added) 45 CFR 84.4(b)(2)

Thus, we urge DOL to liberalize its interpretation of the FLSA, and not require, in all cases, the physical separation of all sheltered workshop and work activity center clients. While we recognize the policy arguments for such separation, studies conducted by DHEW indicate that in certain cases consistent with the Section 504 approach it is desirable to integrate clients of a sheltered workshop or work activities center. We encourage DOL's reconsideration of this issue and re-interpretation of the law so as to permit maximum flexibility in accordance with a handicapped client's needs, while at the same time ensuring compliance with the FLSA.

Very truly yours,

Roma J. Stewart
Director
Office for Civil Rights

Enclosures

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

NOV 16 1981

Honorable Don Nickles
Chairman, Subcommittee on Labor
Committee on Labor and Human
Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request of April 30, as well as a subsequent request of September 28 to the Solicitor, that the Department of Labor reconsider its position that Section 14(c) of the Fair Labor Standards Act (FLSA) and its legislative history require the physical separation of work activities center workers from other handicapped workers in sheltered workshops. I regret the delay in responding to your inquiry.

The reasoning behind the Department's position that work activities centers must be physically separate is set forth in an October 8, 1980 memorandum from the Solicitor of Labor to the Assistant Secretary for Employment Standards, which was enclosed with your letter to me. We have reviewed this memorandum thoroughly, and remain convinced that physical separation of work activities centers is required by the FLSA. Whatever policy considerations there may be in favor of intermingling work activities center employees with sheltered workshop employees, these considerations do not overcome the statutory text and legislative history of Section 14(c).

Your letter also questions the propriety of the earnings and productivity limitations applicable to clients of work activities centers under the Department's regulations (29 CFR 525.2(c)). These regulatory limitations are not directly required by the statute or its legislative history, and other approaches may be feasible. We are engaged in a review of the regulations to determine whether revision would be appropriate in this or any other respect.

However, neither the current earnings and productivity limitations, nor any changes in those limitations, can obviate the need for physically separated work activities centers. Separate centers are required by the statute, and it would therefore take Congressional action to change that requirement. Should such action be taken, we would anticipate no adverse impact upon our ability to ensure that all handicapped workers receive the protection afforded them by the FLSA.

I trust that this letter has been responsive to your inquiry.

Sincerely,

Raymond J. Donovan

Raymond J. Donovan

MAR 4 198

STATE OF MICHIGAN

WILLIAM G. MILLIKEN, Governor

DEPARTMENT OF LABOR

309 N. WASHINGTON, BOX 30015, LANSING, MICHIGAN 48909

C. PATRICK BABCOCK, Director

FEB 27
by
N.D. - Mtrs

DATE: February 27, 1981

TO: Governor William G. Milliken

FROM: C. Patrick Babcock

SUBJECT: Recommendations of the Wage Deviation Task Force

The purpose of this memorandum is to communicate to you the final recommendations of the Department of Labor's Wage Deviation Task Force.

Background

One of the statutory responsibilities of the Department of Labor is the granting of wage deviation certificates to employers covered under the Michigan Minimum Wage Law, allowing those employers to pay less than the minimum wage to handicapped workers. The purpose of allowing such deviations from the minimum wage is to provide additional job opportunities for handicapped workers who would be unable to secure remunerative employment if employers could not pay them less than the minimum wage.

In response to concerns expressed about the adequacy of the Department of Labor's procedures for granting wage deviation certificates and enforcing the requirements of those certificates, I created and chaired a Wage Deviation Task Force. The mission of the Task Force was to recommend improvements in the department's wage deviation procedures and policies. The Task Force included representatives from appropriate state agencies, handicapped workers, and sheltered workshops. I have attached a list of Task Force members for your information.

The Task Force recently concluded its deliberations and agreed upon a comprehensive list of recommendations for improving the state's procedures for granting wage deviation certificates. These recommendations are outlined in the remainder of this report. Because of my departure, the finished final report does not accompany these recommendations. It will be forwarded to you as soon as it is available.

All wage deviation certificates must currently be approved by the Wage Deviation Board. This has resulted in excessive delays (up to 22 months) in approving certificates. This function could be more efficiently performed by administrative staff. It is therefore recommended that existing administrative responsibilities of the Board be transferred to the department director, and that the Board be assigned a policy role with the power of previous concurrence with any administrative rules relating to wage deviation submitted by the department for promulgation.

4) Reduce the seven wage deviation certificates currently issued by the state to a single certificate.

The state currently issues seven different wage deviation certificates. The original intent of these different certificates was to protect various classes of handicapped workers. The actual result has been much needless paper work and excessive regulatory confusion, with no additional benefit accruing to handicapped workers. The Task Force recommends that the process be simplified by issuing a single certificate to each employer.

5) Eliminate the requirement that Work Activity Centers have separate administration and supervision.

Work Activity Centers are sheltered workshop programs operated for handicapped individuals whose productive capacity is considered inconsequential. Currently, Work Activity Centers are required to be physically separate from regular workshop programs and have separate supervision and records. This practice is programmatically undesirable and administratively inefficient. The Task Force recommends eliminating this requirement from state standards.

6) Establish specific standards on determining industry wage rates and time studies.

In order to pay handicapped workers wages commensurate with their productivity, it is necessary to determine the prevailing industry wage for the work they are doing, and to conduct time

WOODLAWN CENTER

1416 Woodlawn Avenue Logansport, Indiana 46947 (219) 753-4282

March 5, 1981

James A. Cox, Jr., Executive Director
National Association of Rehab. Facilities
5530 Wisconsin Ave.
Suite 955
Washington, D.C. 20015

Dear Mr. Cox:

I read with much interest the article in Rehabilitation Review, February 1981, about integrating Work Activity clients with regular sheltered employees.

Two years ago we experimented with this idea and have maintained it legally by applying for individual rate certificates for all WAC employees. Originally our intent was to save space and money. Our concern, prior to integration, was that, to provide space and separate supervision for WAC was expensive and greatly limited our work area. Since we have integrated we have realized an overall savings even though we've had to subsidize the clients.

Although our original intent was to increase space efficiency and save a few dollars, we have also realized other benefits. One is that the self esteem of the former WAC clients has improved. They no longer see themselves as non-productive, for them the change was a promotion and had a morale boosting effect.

Secondly, the productivity of those former WAC clients has increased significantly to where few are subsidized.

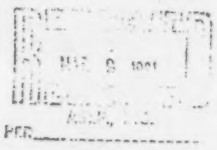
I strongly support and recommend this integration. It not only complies with but also achieves the intent of Sec. 504.

Sincerely,

Duane Stuart

Duane Stuart
Vocational Services Director

DS/dn



VOCATIONAL ADJUSTMENT CENTER, INC.
1249 Boylston Street, Boston, MA 02215

(617) 266-584

Steven W. Zippin, M.A., CRC
Executive Director

May 21, 1982

Senator Edward M. Kennedy
431 Russell Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Kennedy:

At a recent Board of Directors meeting of the Massachusetts Association of Rehabilitation Facilities it was brought to my attention that Senator Donald Nickles of Oklahoma has tentatively agreed to sponsor legislation, which would change the Fair Labor Standards Act to allow co-mingling of Work Activities Clients and Regular Certificate Workers in Sheltered Workshops. It is my understanding that Senator Nickles feels that before he can go ahead with his sponsorship, he needs a Democratic Co-sponsor in order to help insure bi-partisan support.

As the Executive Director of a major rehabilitation workshop program in Boston, I would like to urge you to give very serious consideration to becoming a co-sponsor of this bill.

It is my opinion that the Fair Labor Standards Act as it pertains to this issue is unfair to Work Activities Clients, by forcing them to be segregated from their co-workers. Removal of this requirement would be in keeping with the spirit and intent of Section 504.

It is also my opinion that this separation requirement and earning ceiling limit productivity, improvement of skills levels, and income. It also adds unnecessary administrative management costs that could be better spent on direct client services.

I hope you will give this matter serious consideration.

Sincerely,

Steven W. Zippin

Steven W. Zippin, M.A., C.R.C.
Executive Director

SWZ/ap
cc: James A. Cox
Executive Director
N.A.R.F.

Senator NICKLES. Thank you very much.

Ms. Chasteen.

Ms. CHASTEEN. Mr. Chairman, I have come today on behalf of A New Leaf to present testimony supporting——

Senator NICKLES. Excuse me just a second. Could you pull the microphone close? Thank you.

Ms. CHASTEEN. I have come today on behalf of A New Leaf to present testimony supporting Senate bill 2634, to allow people in work activity programs and sheltered work programs to work together in the same work area.

A sheltered workshop and a work activity center share common goals and processes, yet are divided by one criterion—that of productivity. In spite of equal purpose and similar process, interpretation of the present Fair Labor Standards Act mandates that persons whose productivity is inconsequential be physically separated from persons whose productivity is substantial.

Yet, both programs strive to help the handicapped individual to grow to his potential, to become a more productive citizen, and to achieve a less handicapped state. Each type of facility utilizes a similar process of establishing an individual program of work and supportive services to facilitate reaching these goals.

Mixing participants of the two programs has many positive implications. I have chosen to discuss two of those implications today.

First, integrating the two programs would enhance productivity and individual growth and provide a more normal environment. The factor that distinguishes a handicapped person from a nonhandicapped person is that some part of his or her body is not working properly. The basic wants, needs, drives and motivators are the same. The theories of productivity apply equally to the competitive job and sheltered work or work activity setting.

In a factory, a piece rate system of pay is based on the idea that some people will produce faster than others, but slow factory workers are not separated into a different room because they are slow. They are given a standard to meet and they receive appropriate recognition if they meet that standard. The same principle should be applied for the handicapped.

A number of facilities are using the technique of mixing the ability levels of their handicapped employees to encourage the lower level people to strive harder. This approach is working. It also has had the effect of improving the performance of the more capable people.

I once worked with a young disabled female who was reluctant to work with a retarded male whose intelligence and communication skills were far below hers. I put the two together in a team with her as team leader, responsible to see that he understood the task and to work along with him. There were benefits for both. He did a top-quality job on the task and tried to do as many as she did. Her quality improved so that it was equal to his, and she discovered that her conceptions of his ability had been very wrong.

People adjust to their environment. Being in an environment where maximum productivity is 25 percent tends to set that as a standard and restricts development. If the environment stresses higher productivity, then that is what will be strived for.

I know of a facility that recently began serving the industrially injured. When this population of high producers was integrated into the group of borderline mentally retarded already working there, the high producers' presence became a motivational factor. Performance improved and production increased by 10 percent almost immediately.

The emphasis on increased production is really an emphasis on providing a vehicle whereby a person can grow. It is also a means of helping a person to earn more money. Taking home a paycheck is an important part of the process of building self-esteem. The ability to hold a job—that is, to earn money—is one of the measures that American society uses to judge a person's worth.

The people we are discussing feel that too. They feel pride in the money they earn and they feel good when their paycheck increases. We have an obligation to provide the framework whereby we enable maximum potential for these things to occur.

The second issue I have chosen to discuss is a more practical one but still very important. Integrating the two programs would allow more effective use of available facilities, staff, and dollars.

Because A New Leaf can provide a clear example of the direct effect of this legislation, I use it to illustrate this point. A New Leaf is a horticulturally oriented facility for the handicapped. We are a small program and still growing. We have 2 greenhouses and an office building which give us the capacity to serve 26 people. Each greenhouse will accommodate 13 people.

Until recently, we have had only a training program, but in response to the needs of our community, we have just obtained a certificate so we can provide work activity programing. To meet the current requirements of the work activity certificate, each greenhouse now has to be designated for use for a specific program. Each program must have an individual staff person, regardless of the number being served in the program.

We currently have 10 people in our training program and 3 who are eligible for the work activity program. This total of 13 people, if in one program, would require only 1 full-time supervisory staff person. To provide the dual program, we have to hire an additional full-time staff person for the three people eligible for work activity.

In an era when dollars are scarce, a facility has to consider if it is practical or even possible to provide a staff person and a building for three people. Yet, these three people need services now, not when there are larger numbers eligible.

If either program grows more rapidly than the other, it is possible that we will have a situation where we have to turn away applicants because their particular program is full, when the facility is still not being used to capacity. This is poor business management that is mandated by legislation. Facilities cannot survive with poor business management when dollars are scarce.

In closing, let me reiterate that passage of Senate bill 2634 would enhance individual growth and productivity, and provide a more normal environment for handicapped people. It would also allow more effective use of facilities, dollars, and staff. We at New Leaf strongly support this bill and thank you for your efforts.

Senator NICKLES. Thank you, Ms. Chasteen.

Mr. Payne, you mentioned the possibility that if you were able to have integration, you could serve more people. And the particular group that you are with, Brevard, has how many people? You serve 200 and some?

Mr. PAYNE. No. We serve 130 on a daily basis and something over 250 on an unduplicated count annually.

Senator NICKLES. Most mentally, or mentally and physically?

Mr. PAYNE. We run about 70 percent developmentally disabled, which includes mental retardation, epilepsy, cerebral palsy, and so forth. The other 30 percent are emotionally disturbed and physically handicapped.

Senator NICKLES. You said if this legislation was enacted, you believe that you would be able to serve more people. Are you talking about being able to serve more people with existing staff?

Mr. PAYNE. I would be able to serve more people with the existing staff. One of the complications in our life today is that we are permitted to have a very limited number of sheltered employees if we have them individually certificated with the Department of Labor. That limit, in our case, has been deemed to be four clients.

About 8 years ago when we had 40 clients, that was an acceptable limit. We are at 130 today and we still can only have 4. So, there are people who are in need of the service. We do not have the money to do the construction to develop the separate capability. Yes; we would be able to, under this setup with the existing staff.

Senator NICKLES. Ms. Chasteen mentioned in her case that she had a couple of greenhouses. What type of buildings or physical plant do you have, and what are your clients working on or with?

Mr. PAYNE. The workshop portion of our facility is a warehouse building that has been modernized. It has four different bays in it, and we do work in mail fulfillment, in sewing, in productions assembly, packaging, and that type of thing.

Senator NICKLES. By mail work, you are talking about stuffing envelopes, sorting mail and this type of thing?

Mr. PAYNE. Yes. Any mail fulfillment job that can be done, we have the capability to do it.

Senator NICKLES. And then what were some of the other bays doing?

Mr. PAYNE. We have a sewing department, which has about 25 clients in it. We manufacture our own product line, as well as do subcontracts for modification of uniforms, and so forth. Another bay is very big in the area of packaging and assembly where we actually do rather sophisticated assembly for IBM Corp., Auto Center, and jobs of that nature.

Senator NICKLES. Did you tell me that you actually have both the sheltered workshop and the work activity center?

Mr. PAYNE. No. We are at this moment only certified as a work activities center, despite the fact that we have passed CARF accreditation for certification as a sheltered employment capability. But because of the limitation of the physical segregation, we are unable to pursue that point at this time.

Senator NICKLES. If we were able to eliminate the physical barriers could you actually employ, train or help more handicapped people?

Mr. PAYNE. In my judgment, once this bill becomes an act, we would go, within a 90-day period, to an additional 30 clients, leading to still more in a later timeframe. I can do 30 clients' more work with existing staff than I am able to do now.

Senator NICKLES. Would those 30 clients be under the sheltered workshop?

Mr. PAYNE. They would be in a sheltered workshop environment, yes.

Senator NICKLES. Ms. Chasteen, do you have 13 individuals now that you are working with?

Ms. CHASTEEN. Currently, yes.

Senator NICKLES. Currently?

Ms. CHASTEEN. Yes.

Senator NICKLES. Those three people would fall into the work activity center? What are you doing with those now as far as the separation? Are they in one greenhouse as compared to the others?

Ms. CHASTEEN. Yes. I have to keep them separate. I either have to keep them in a classroom situation or in a separate greenhouse from the other people.

Senator NICKLES. You actually have one greenhouse that is for those 3 and the other 10 are in the other greenhouse?

Ms. CHASTEEN. That is right.

Senator NICKLES. You are really talking about physical separation because you are talking about two separate greenhouses.

This is a question for both of you. Do you have many more people that could be served and that need to be served in your communities if we could eliminate these restrictions?

Ms. CHASTEEN. Right now, we do not have anyone on our waiting list. As I mentioned in my presentation, we are a growing facility. We have the potential to serve 26 people, but where I am right now, I can only add 3 more within one program while I have space for 10 in the other. And it is unrealistic to think that the growth pattern will be exactly 3 for one program and 10 for the other.

So, by legislation, I am technically limiting what the facility can serve.

Senator NICKLES. If we were able to eliminate that barrier, then if you had an increase in the population where you have 10, you could continue to intermingle?

Ms. CHASTEEN. Yes, sir.

Senator NICKLES. Let me ask Mr. Payne, is there a protection against wage loss by the handicapped? How is the handicapped person being protected where he would not be intermingled into the lower category and have his wages reduced?

Mr. PAYNE. In my judgment, there are a number of checks and balances today which would prohibit any detrimental effect. We are obligated, as executive directors and workshop managers, to pay people based on performance and production. We are required very specifically to maintain records and to review these records a minimum of twice annually with respect to the production rates.

We are constantly under surveillance not only by the Department of Labor and the folks who do the accreditation process with us, but also by funding sources in at least our State—vocational rehabilitation and our health and social services outfit.

So, in addition to this, I would submit that if there was to be—and it is inconceivable to me that there could be—the Department of Labor, at least on an annual basis, would have an awareness of that because for years, we have submitted annual earnings reports for each client. And for the long-term client that remains in there, the awareness at the Department level of any reduction or any serious reduction would cause us to provide an answer.

I sincerely have studied this carefully. I do not believe it will be derogatory in any sense to the higher level, and I certainly believe very strongly that it will be most important to lower level clients.

Senator NICKLES. I appreciate your comments.

Ms. Chasteen, you mentioned the fact that you felt like it would do a great deal for those who are in the work activity centers to be able to be stimulated or to copy the role models of the more productive workers.

I think you mentioned one case where you have seen this happen. Might the person who is severely handicapped, mentally or physically, possibly use the more productive role model and make that a contagious application as far as production?

Ms. CHASTEEN. Yes, I have. I have done a lot of work with putting together people, you know, from one ability level to another in a team situation. And there seems to be a real feeling of accomplishment for the lower level person to be able to keep up with this person who is doing better.

There is also a realization that keeping up with the person who is producing more also means that each person's paycheck is going to be fairly close to the same. People compare paychecks and they like the idea that they are able to make close to the same amount of money. It seems to be a very important motivator.

Senator NICKLES. It would give them some economic stimulus as well as seeing the possibility of having a more productive person working side by side. We have contacted DOL and tried to make an administrative change to see if that would be possible. We will enter into the record at the appropriate time the correspondence that we had with DOL, and also from Secretary Donovan, that basically stated that we would have to make a statutory change as far as their interpretation of the law. That is the reason why we are here today.

That physical separation denies them that access to be able to learn from a person with less of a handicap. We hope to eliminate that.

Senator Hawkins, it is a pleasure to have you join us. Do you have an opening comment or questions you might want to make?

Senator HAWKINS. I would like to commend you, Mr. Chairman, for holding these hearings and introducing this legislation. I believe it is an inadvertent and obsolete provision of the Fair Labor Standards Act. Also, I would like to commend you for calling Mr. Walter Payne from Rockledge, Fla., to be a witness. He is an expert in this field from my State and I visited with him a little bit yesterday. We are so proud you can participate here today.

I have visited the Brevard Achievement Center several times, and also several other of the sheltered workshops in our State.

I would like to ask Mr. Payne if, in his opinion, most violations of the Fair Labor Standards Act are unintentional, resulting from a lack of understanding of these technical regulations.

Mr. PAYNE. If I understand the question of violations, it is our judgment and my judgment that they are unintentional. May I give you an example?

Senator HAWKINS. Surely.

Mr. PAYNE. We have four sheltered employees; we have documented that. We established a training program that we thought was very critical to those sheltered employees, leading to competitive employment. We had a youngster who was severely handicapped who had spent 33 years in a State institution. In the deinstitutionalization process he was released, if that is the proper word, and came into our program in our work activity center.

At the end of about 3 years, we had done some things with him which led us to believe that there was a potential for far greater things. Unintentionally, we exposed him to a portion of the training for the sheltered workshop people. One year later, that young man was employed by a major industry in our county, Harris Corp. Within a 15-month period of time, he had been promoted twice, he had had four pay raises, and he had been recognized for an employee award for outstanding performance.

I suggest to you that while that might have been unintentional, there are those who would say that under the provisions of the law, you cannot legally do what we did to date. We are very much concerned about individuals and their needs. The adoption of this bill will make that an everyday occurrence in our life.

Senator HAWKINS. I am very proud of what you have done at your center, but is there a temptation to limit productivity of the individuals in order to not lose the overall certificate?

Mr. PAYNE. Absolutely not. There cannot be.

Senator HAWKINS. Can you explain the multiple certificate system and the difficulty that it creates to you?

Mr. PAYNE. Yes. We are a work activity center. We are constrained by certain requirements as to pay; we acknowledge those. We occasionally get higher levels of individuals who need training.

As soon as we have completed the evaluation process and ascertained capabilities and needs, then if their productivity, as determined in the evaluation process, qualifies for sheltered employment, we must then go into the Department of Labor structure and request an individual certificate.

I believe that before you came in, I explained that we are limited, regardless of the total number of clients in our facility, to only four. One, I feel that is very unfair. Two, regardless of that, I choose not to fight that issue because as long as the physical separation barrier exists, it would not do me a great deal of good to get an additional 10 cleared for sheltered.

If the barrier restriction is removed, I indicated earlier that we could probably increase by an additional 30 clients within a 60- to 90-day period.

Senator HAWKINS. Thank you, Mr. Payne.

Senator NICKLES. Mr. Payne and Ms. Chasteen, we thank you. I might reiterate that we are talking about trying to help nonprofit organizations. I think that sometimes is good to repeat.

I might just ask one followup question. You mentioned the success of an individual that went all the way from a work activity center to a sheltered workshop to private employment.

Through the sheltered workshop, have you had very good success as far as moving handicapped individuals from that area into the private sector?

Mr. PAYNE. Yes, sir. Our work activity center is located in a non-industrialized area and it is very tough for us to make placements. The aerospace industry is very big down there, but they do not need the kind of people that we have.

However, from January 1 of this year to date, we have placed 29 people in competitive employment. One point I would like to make is we must never give up on the severely disabled. We have had some outstanding successes, and I suspect others who follow us will tell you that the categorization of inconsequential many times does not hold water. We are able to work with people and put them out into our community.

I do not know what our overall placement rate is in the State of Florida, but we are rather low because of our location. But we are very proud of the people that we have placed.

Senator NICKLES. You have placed 29 in what period of time?

Mr. PAYNE. Since January 1 of this year.

Senator NICKLES. You are to be commended for that. When you think of the longrun implications and positive things, it certainly proves valuable not only to the program and the individuals involved, but also to society as a whole.

I certainly would concur with your assessment of that labeling of "inconsequential." Hopefully, we will be able to move people into the semiproductive, productive, and into the private sector.

Ms. Chasteen, have you had some success? You are a smaller organization—I realize that—working primarily in the horticultural background. But have you had some success as far as moving people, possibly, into the private sector?

Ms. CHASTEEN. Yes. That is one of our primary goals. We placed six people into the private sector last year and we have placed two people so far this year.

Senator NICKLES. And your average group is about 13?

Ms. CHASTEEN. We had a group of 24 people that we served through the year last year.

Senator NICKLES. Well, you are to be commended for that; that is fantastic.

We thank you both very much for your expertise, and also for your input on this legislation.

On our next panel is Adm. David Cooney, who is president and chief executive officer of Goodwill Industries of America, and Norman Grunewald, a program specialist from Chicago, representing the National Easter Seal Society.

If you will excuse me, we need to vote and we only have a few minutes. We will adjourn and I will return promptly.

[Whereupon, a brief recess was taken.]

Senator NICKLES. I will attempt this again and hope we do not have a vote right before you get started.

Mr. Cooney, would you care to begin?

STATEMENT OF DAVID M. COONEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, GOODWILL INDUSTRIES OF AMERICA, INC., WASHINGTON, D.C., AND NORMAN GRUNEWALD, PROGRAM SPECIALIST, NATIONAL EASTER SEAL SOCIETY, CHICAGO, ILL.

Admiral COONEY. Good morning, sir. You have a longer statement, but in the interests of brevity and clarity, I will simply add a few remarks to that which has already been said by those who preceded me to the microphone.

Senator NICKLES. You might pull that microphone a little closer. Thank you.

Admiral COONEY. We are also deeply appreciative of the attention that you and this committee have paid to this legislation, and we think it is key to providing proper services to those who are less fortunate than the majority of Americans and in rehabilitating them so that they may properly fulfill their role in the working society of America and be able to achieve what Goodwill's purpose is—a full life in the mainstream of America socially, economically, and politically.

Goodwill Industries of America is a national organization which has 170 facilities distributed across the United States, and which last year provided services to 67,000 clients. Of those 67,000 clients, some 32,000 over a period of time were Goodwill employees, most of them in the sheltered workshop environment.

Senator NICKLES. 32,000?

Admiral COONEY. 32,000; that is workshop and work activities together.

I think the key factor here, Senator, is that of the 170 Goodwills, only 44 have work activity centers, and I might add that none of those 44 are in Oklahoma. The major issue here is that the burden which is placed upon a nonprofit organization, such as a local Goodwill corporation, to create the facilities necessary to conduct a work activity center properly and in strict accordance with the law is extremely burdensome from the standpoint of management time, economic investment, social problems and a variety of other things.

It is our hope that if this legislation is amended as you propose, we could significantly increase that number of 44 to where it would become almost universal within the Goodwill movement in the United States.

Senator NICKLES. I do not want to interrupt your statement, but do you think that would be possible or more probable?

Admiral COONEY. I would be foolish to predict that that would happen in a short period of time because there are many factors which bear. But I would say that over the next several years, the trend would be to open the doors of Goodwill facilities to those handicapped individuals who today are legislatively barred from entry to those facilities.

So far, I have dealt with things in gross, and we need to deal with trends and costs and that sort of thing, but I do think we need to personify the issue as well. To illustrate, I very recently visited the Goodwill facility in Colorado Springs, which is one of our more productive facilities and which has recently undergone a major overhaul in its physical plant.

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We have about 100 individuals working on a variety of things on the floor of that building. There is a white line down the center of that facility. On one side are people who are work activity individuals, and on the other there are sheltered employees. That white line represents a great deal other than just so much paint on the deck of that building, sir. It represents a psychological barrier, an economic barrier and a social barrier which need not be there.

Under the kind of individual administration and attention to clients which has characterized the Goodwill program throughout its successful 80 years of operation, there is no reason why that line needs to exist. But because it does exist, we must add extra staff, we must buy extra equipment, we must spend extra money on energy, and we must maintain an individual inventory of supplies.

The burden on that facility is significant. We choose to accept that burden because of the requirement to serve the people, which is our sole purpose. But in other areas which are economically less fortunate than Colorado Springs, the acceptance of such a burden is economically impossible.

I suppose that some will tell you that the moving of employees from a work activity center into a sheltered workshop situation could cause a slowdown in the productivity of the people in the sheltered workshop, and this would cause lost wages.

Our experience over the many years that we have been in the business indicates that that would not be the case. Frankly, in the sheltered workshop situation you have people who are already certified from 50 percent on up, and the disparity of the individual who is operating at the 30 or 40 percent to the 50 percent is less than the 50-percent person to the 80-percent person.

The whole emphasis in a successful workshop situation is on arranging the work so that it suits the individual's best needs, and I pledge to you that if this law becomes enacted and the changes are made, we will continue that trend and look out for the individual. We are not there to make money; we are there to serve. On the other hand, we are not there to lose money, because if we do, we cannot serve.

I would hope that this legislation passes so that we may open the doors and better serve our economic and social needs, which is our purpose. Thank you.

[The prepared statement of Admiral Cooney with enclosure, follows:]

Statement

of

David M. Cooney
President and Chief Executive Officer
Goodwill Industries of America, Inc.

before

Subcommittee on Labor
Senate Labor and Human Resources Committee

August 11, 1982

On behalf of Goodwill Industries of America, congratulations on the innovative and courageous effort this Committee has taken through examining this important piece of legislation, which, as you know, affects a large number of disabled citizens. At Goodwill we have long sought to find new ways of addressing old problems so that we may contribute to the quality of life of our disabled clients.

As the largest, private employer of handicapped Americans, we have a vested interest in the content and implementation of the Fair Labor Standards Act, as well as considerable experience in its specific execution at the workshop level. In 1981 Goodwill served more than 32,000 clients and provided rehabilitation services, such as vocational evaluation and training, to more than 67,000 disabled men and women. Of the 170 Goodwills in the United States, 44 operate work-activities centers in conjunction with their regular workshop programs.

Goodwill's knowledge and experience brings me here today to support, wholeheartedly, the proposed amendment to Section 14(C)(3) of the Fair Labor Standards Act to allow, on a permissive basis, integration of severely disabled people in work-activities centers with other handicapped people working in sheltered workshops. We believe this bill is in the best interest of American society, as well as of those handicapped clients we serve. That support is based upon certain specific areas of interest - first, social responsibility and, second, economic and resource accountability.

In respect to the first, while the basic legislation created an opportunity to provide employment at equitable rates of compensation for Americans who had previously been considered unemployable, it did create certain categories among the handicapped. While considered far-sighted at the time of their creation, these categories have, through development of new rehabilitation and psychological skills and a change in the population we serve, become too arbitrary. That is perhaps best illustrated by the requirement that work-activities center clients be physically separated from less disabled workers.

May I give you an example: A western Goodwill Industries was specifically designed so that work-activities center clients could be close to, and part of, the whole community of workers, rather than set off in an isolated area. Workers in both groups perform the same activity, yet, because of the current structure of the law, they are separated by an aisle with a white line painted down the middle.

Additionally, the two groups must have separate production lines, separate inventory areas, and separate supervisors.

This distinction creates an artificial barrier between the groups of workers. It creates a separate category of persons in the workplace who face daily a white line separating them, unnecessarily, from upward economic and social mobility. This line is a closed door to successful role models in the persons of less handicapped Americans from whose example they could benefit and from whose companionship they could gain much.

In respect to the issues of economics, this Committee needs no lessons from me in respect to the shortage of financial assets which those of us in the non-profit part of the private sector face. Those shortages make it incumbent upon us, if we are to be socially and fiscally accountable, to make maximum use of each penny and each square foot of work space. In the example I cited earlier, because of the current interpretation of the law, there are separate production lines, inventory areas, and supervisors. This means there must be duplication of plant facilities. It requires extra supervisors and managers, increased work space, and the use of additional energy. The proposed amendment would allow each manager at the local level to make a determination as to what method of organization and employment of his clients and workload would be most beneficial to the client and make the greatest economic sense.

The creation of unnecessary duplication not only does not benefit the client presently enrolled, but, through inefficient use of funds and facilities, precludes the enrollment of additional clients who may have no other place to turn. With the growing trend toward the deinstitutionalization of severely disabled individuals, there is going to be a greater need for the services provided by the work-activities centers. Now, however, if a sheltered workshop does not have a work-activities center, it has to turn away severely disabled clients. This amendment will allow regular workshops to accept clients who need the services of a work-activities center without having to set up an isolated work area for a few individuals. Work-activities center clients would work alongside regular workers and receive the same quality of rehabilitation services as work-activities center clients currently receive in separate programs.

Additionally, the proposed bill addresses the problem associated with workers who have fluctuating work-activities levels due to the nature of their disability. Currently, a worker must be certified as either a sheltered workshop or work-activities center client. If the worker's productivity level varies, then the worker must be re-classified. This means, in many instances, that a work-activities center client, who needs the services provided by the work-activities center, must be cyclically placed in the sheltered workshop, where those services are not provided, simply because of a higher productivity level during a period of time. The amendment would eliminate the need to re-certify the client as the individual's work pattern

varies. Thus, the facility would be able to provide a continuum of services according to the needs of the individual while still maintaining fair and equitable wage payments.

In summary, the legislation was originally enacted and, I believe, has been executed, with the purpose of taking the previously unemployable, integrating them into the work-place, and providing opportunities for them to receive the benefits of their own skills and efforts. That the legislation has been effective is clearly demonstrated by the numbers of Americans who today are employed in sheltered workshops or in mainstream facilities who began their work effort under the provisions of the statute. Now we have an opportunity to provide flexibility in the execution of the Act to allow all appropriate individuals equal opportunity for upward mobility, especially for that group of Americans previously considered to be unemployable or non-productive. That we can achieve this equality without any additional burden to the taxpayer, while at the same time providing greater financial and employment opportunities to severely disabled Americans, is important. There seems to be no argument against it.

Once again, I congratulate you upon your interest in this important matter and for the great energy which you have devoted to consideration of a significant issue with great impact upon many Americans who, for a variety of reasons, are silent. I merely seek to be their voice today. Thank you.

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David M. Cooney
Rear Admiral, US Navy (Ret.)
President & Chief Executive Officer

September 10, 1982

Senator Don Nickles
Chairman, Subcommittee on Labor
Senate Labor and Human Resources Committee
6327 Dirksen Senate Office Building
Washington, D.C. 20515

Dear Senator Nickles:

During the Labor Subcommittee's hearings held on August 11, 1982 on S.2634, the National Federation of the Blind submitted testimony in opposition to the bill. In response to the Subcommittee's request, we have prepared a response to their position, and ask that it be entered into the record of the hearings.

Thank you for the opportunity to include this additional information in the record.

Sincerely,

David M. Cooney

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Enclosure

Additional Statement

of

David M. Cooney
President and Chief Executive Officer
Goodwill Industries of America, Inc.

before

Subcommittee on Labor
Senate Labor and Human Resources Committee

Mr. Chairman, I offer an extension of my previous statement in support of S. 2634. Responding to the request of committee members, I will address the testimony of Mr. James Gashel, Director of Governmental Affairs for the National Federation of the Blind. While I share Mr. Gashel's commitment to meaningful employment and increased wages for disabled Americans, there is a significant difference in our approach to the proposed legislation.

Mr. Gashel speaks as a representative of a single disability group with unique needs. His emphasis is on increased wages for the blind. Yet this bill will affect not only the blind, but also people with other severe physical and mental handicaps. It is designed to deal not only with wages for the most productive disabled persons, but also with improving the advancement opportunities of the more severely disabled persons. We believe that the proposed amendment will help all of these people toward a more productive and enjoyable life and, thus, goes far beyond the National Federation of the Blind's single issue emphasis.

Speaking for Goodwill Industries, let me emphasize that local Goodwill agencies exist to provide rehabilitation services to all types of disabled individuals. Goodwills are not structured to achieve net profits from the operation of a work activities center or a sheltered workshop. Most Goodwill Industries do not have major endowments to support their operations. For example, in 1981, Goodwill Industries' revenues came from five principal sources: retail sales of refurbished goods (51%); fees for rehabilitation services (17%); public support (11%); industrial contract services to business (9%); and marketing salvage materials (7%).

As a non-profit organization, we measure our success in terms of the number of clients placed in jobs and in terms of the number of clients given vocational services. In 1981, Goodwill Industries placed 8,057 disabled individuals in jobs and provided vocational rehabilitation services to 67,700 disabled people.

Now let me turn to the five points raised by Mr. Gashel in his testimony before the subcommittee:

1. "Eliminating the physical separation of work activities centers from regular scheltered workshops in the manner proposed in S. 2634 will actually bring about a repeal of the wage protection provisions of Paragraph (1) of Section 14(c) of the FLSA."

   Response: This statement is inaccurate in two respects: (1) it does not recognize the continuing requirement for commensurate wages based on individual productivity; and (2) it makes no mention of the current availability of individual rate certificates for payment at below the sub-minimum wage guarantee rate.

The law requires that commensurate wages must be paid according to each individual's productivity rate, not withstanding a lower group rate. Even if several workers were grouped under a 40% of minimum wage work activities center certificate, according to the NFB example, each worker must be paid his own commensurate wage which, assuming an average 65% productivity level in the example, would be 65% of the minimum wage.

In addition, clients working under individual rate certificates must also be paid commensurate wages, even if those wages exceed the guaranteed rate. In short, the NFB argument is faulty because commensurate wages are paid to all clients, no matter under which certificates they come.

2. "Eliminating the physical separation of work activities centers from regular sheltered workshops in the manner proposed in S. 2634 will actually bring about reduced wages for handicapped workers."

Response: The NFB argument appears to be based upon two assumptions: (1) that all work activities centers will be integrated with regular workshops: and (2) that all work activities centers' clients are "non-producers." These assumptions are false.

Not all work activities centers will be merged with regular workshops. The law would permit, but not require, integration of work activities centers with regular workshops. In facilities that operate both a sheltered workshop and a work activities center, two groups may be integrated using careful production-line balancing

techniques so that the productivity of less severely handicapped individuals is not impaired. In the same way, the productivity of the more severely handicapped clients may increase through proximity to more productive role models.

The second assumption is that all work activities' clients are non-productive. That is false. Productivity levels for these clients vary over time and with each task. Our experience is that, on certain tasks, work activities' clients can be productive, while on other tasks their productivity is inconsequential. Permitting these marginally productive clients to work alongside less severely disabled clients on appropriate tasks would allow them to increase their productivity without reducing the productivity of the regular workers.

3. "Eliminating the physical separation of regular sheltered workshops from work activities centers will actually make Section 14(c) administratively more difficult to enforce."

Response: We agree that the regulations implementing Section 14(c) are difficult to enforce, due in large part to the complex certification process. However, physical separation of the two groups is just a regulatory requirement and not a tool for effective enforcement of the regulations.

Proper record-keeping is essential for effective workshop investigations and for compliance with the FLSA. The bill will not change the record-keeping process currently in place. Separate records for work activities center clients would still be kept, including

information on wage rates, piece rates, individual time and productivity records, time studies, and performance evaluations. Therefore, the bill will not make Section 14(c) more difficult to enforce.

4. "The physical separation of the regular sheltered workshop from the work activities center is essential to protect the integrity of both operations."

Response: The statement does not recognize that regular workshop clients also receive vocational services, such as counseling and training, in addition to their paycheck. The regular sheltered workshop is designed to train workers for competitive employment. Working in a workshop is not just "an ordinary job" for most clients.

Work activities center clients need, and receive, greater therapeutic services than sheltered clients. If S. 2634 is enacted, integrating the two groups will not reduce the provision of these services to severely disabled clients, as the NFB asserts. The bill would eliminate the need for separate, duplicate personnel by combining these two workshop staffs. Case management and support services will not necessarily decrease for either the work activities' clients or the regular workshop clients and might, through increased efficiency, be enhanced.

5. "The physical separation of regular sheltered workshops from work activities centers does not promote discrimination on the basis of handicap."

Response: The physical separation requirement of Section 14(c)(3) is contrary to the intent of Section 504 of the Rehabilitation Act

of 1973 and perpetuates discrimination based on handicap by establishing artificial barriers between two groups of disabled persons. Section 504, which prohibits discrimination on the basis of handicap by recipients of federal financial assistance, reflects today's changed perception of the abilities of disabled persons in society. While Section 504 does not specifically mandate elimination of barriers between handicapped people, the intent of 504 is to provide opportunities for disabled persons in the most integrated setting feasible and to reduce artificial barriers.

The current requirement for physical separation is an artificial barrier because the two groups of clients are engaged in productive work tasks, albeit at different levels of productivity. Work activities center clients should not be physically separated simply because their productivity is less than other clients, rather they should be provided opportunities for growth. The proposed legislation promotes this objective and would bring Section 14(c)(3) in conformity with the intent of Section 504.

Senator NICKLES. Thank you very much.

Mr. Grunewald.

Mr. GRUNEWALD. Thank you. On behalf of the National Easter Seal Society, I want to thank you for the opportunity to make this presentation today.

My name is Norm Grunewald, and as a program specialist for the National Easter Seal Society, my primary role is to serve as a consultant and a resource for our nationwide network of affiliates providing vocational rehabilitation services for persons with disabilities. Much of my effort is directed to our 38 work center programs.

I should explain that our organization is attempting to spearhead a national campaign within the field of rehabilitation to adopt and use the term "work center" replacing the old, familiar "sheltered workshop" designation. We strongly believe that vocational rehabilitation facilities must upgrade their operations and service delivery systems in order to not only survive but grow in the 1980's.

The work center term is one component part of that process to improve performance. I will, therefore, be using the work center term except when citing existing legal or regulatory references to sheltered workshops.

The issue before the Senate Subcommittee on Labor is remarkably simple yet far-reaching. The present definition of work activi-

ty centers contained in section 14(c)(3) of the Fair Labor Standards Act is as follows:

> Centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairments are so severe as to make their productive capacity inconsequential.

S. 2634 removes the words "planned and designed exclusively to" from the definition, and changes the words from "work activities centers" to "work activities programs." Additionally, people with severe disabilities in the program would be referred to as "individuals" rather than as "clients." These changes would allow the integration of individuals in work activity programs to work alongside other work center workers.

The Department of Labor regulations, as determined by the Department's Solicitor, require that work activity centers and other work center programs be physically and programmatically separate.

Since the 1966 amendments, significant changes have occurred relative to work centers, to work activity centers, and to the makeup of clients served or individuals served. Moreover, public attitudes and policies are now very different from those which existed two decades ago.

During the last 16 years, the proportion of individuals with severe disabilities participating in work center programs has dramatically increased. In part, this trend is the result of greater success in placing persons with disabilities in competitive employment. To a larger degree, however, this increase is attributed to efforts by State to deinstitutionalize persons with severe disabilities.

Many individuals with severe mental and physical impairments have returned to their communities and now are participating in work activity programs. In addition, the Federal Government has placed greater emphasis on the need to serve individuals having severe disabilities on a priority basis.

These factors have contributed to a substantially different mix of individuals served in work center facilities today. Facilities which were previously viewed as agencies of transition with respect to employment have in some cases become long-term service providers for individuals whose impairments have made their placement in competitive employment unlikely.

Unfortunately, the current regulations do not reflect the tremendous change which has taken place regarding the type of individuals participating in work center programs. The physical separation rule represents a sizable burden on both the facility and on the individuals served.

From a financial perspective, work centers are currently required to bear substantial and unnecessary costs in order to maintain separate facilities or floor space, separate supervisory staff and separate records.

More importantly, however, are the costs borne by the work activity center individuals as a result of the physical separation requirement. For the past 16 years, individuals with severe disabilities have been denied the opportunity to profit from the example of more skilled work center workers. Experience has shown that the productivity of persons with severe impairments usually in-

creases in the presence of more productive workers. And no factual study, to our knowledge, has demonstrated that productivity declines for higher functioning individuals as a result of interaction with less able individuals.

The National Easter Seal Society believes that the concept of mainstreaming should be applied to the work center environment. When appropriate, we believe that individuals with severe disabilities should be allowed to work with less severely impaired workers who serve as positive role models.

We also urge that the report issued by the Interagency Coordinating Council regarding section 14(c) be given due consideration in this matter. After careful review, the Interagency Coordinating Council has gone on record as being in favor of integrating work activity center individuals with other work center workers. We believe that, allowed the option to serve these individuals together, facilities will be able to provide much more productive, efficient, and enriching programs for the persons they serve.

For all of these reasons, we recommend that the Fair Labor Standards Act be amended according to the proposals contained in S. 2634. The decision to allow work activity and work center individuals to work together should be based solely on specific needs of the individuals served rather than be regulated by outmoded, restrictive legislation.

For example, I was recently at an Easter Seal facility in which the staff expressed great frustration over the physical and program separation rule. They insist that many more work activity individuals would graduate to other facility programs if they were allowed the opportunity to integrate people served regardless of classification.

The staff has asked me to express their plea to you. They merely want the people that they serve to have an opportunity presently not allowed by law. Individuals with severe disabilities deserve every opportunity to develop their work and employment skills to the fullest extent possible. With the enactment of S. 2634, there will be one less barrier to that goal.

[The prepared statement of Mr. Grunewald follows:]

TESTIMONY

on

LEGISLATION TO AMEND

THE FAIR LABOR STANDARDS ACT

Respectfully Submitted

to

SUBCOMMITTEE ON LABOR

SENATE COMMITTEE ON LABOR AND

HUMAN RESOURCES

Presented by:

THE NATIONAL EASTER SEAL SOCIETY

Witness:

Norm Grunewald

Wednesday, August 11, 1982

98-285 O - 82 - 5

Thank you, Mr. Chairman. My name is Norm Grunewald. As a Program Specialist for the National Easter Seal Society, my primary role is to serve as a consultant and a resource for our nationwide network of affiliates providing vocational rehabilitation services for persons with disabilities. Much of my effort is directed to our 38 work center programs.

I should explain that our organization is attempting to spearhead a national campaign within the field of rehabilitation to adopt and use the term "work center" replacing the old, familiar "sheltered workshop" designation. We strongly believe that vocational rehabilitation facilities must upgrade their operations and service delivery systems in order to not only survive, but grow in the 1980's. The work center term is one component part of that process to improve performance. I will, therefore, be using the work center term, except when citing existing legal or regulatory references to sheltered workshops.

The issue before the Senate Subcommittee on Labor is remarkably simple, yet far reaching. The present definition of work activities centers contained in section 14(c)(3) of the Fair Labor Standards Act is as follows:

> "Centers planned and designed exclusively to provide theraputic activities for handicapped clients whose physical or mental impairments are so severe as to make their productive capacity inconsequential."

S. 2634 removes the words "planned and designed exclusively to" from the definition and changes the words from "work activities centers" to "work activities programs". Additionally, people with severe disabilities in the program would be referred to as "individuals" rather than as "clients". These changes would allow the integration of individuals in work activity

programs to work alongside other work center workers.

The Department of Labor regulations, as determined by the Department's Solicitor, require that work activity centers and other work center programs be physically and programmatically separate.

Since the 1966 Amendments, significant changes have occurred relative to work centers, to work activity centers, and to the make-up of individuals served. Moreover, public attitudes and policies are now very different from those which existed two decades ago.

During the last sixteen years, the proportion of individuals with severe disabilities participating in work center programs has dramatically increased. In part, this trend is the result of greater success in placing persons with disabilities in competitive employment. To a larger degree, however, this increase is attributed to efforts by states to deinstitutionalize persons with severe disabilities. Many individuals with severe mental and physical impairments have returned to their communities and now are participating in work activity programs. In addition, the federal government has placed greater emphasis on the need to serve individuals with severe disabilities on a priority basis.

These factors have contributed to a substantially different mix of individuals served in work centers today. Facilities which were previously viewed as agencies of transition, with respect to employment, have in some cases become long-term service providers for individuals whose impairments make their placement in competitive employment unlikely.

Unfortunately, the current regulations do not reflect the tremendous change which has taken place regarding the type of individuals participating in work center programs. The "physical separation" rule represents a sizeable burden on both the facility and on the individuals served. From a finan-

cial perspective, work centers are currently required to bear substantial and unnecessary costs in order to maintain separate facilities or floor space, separate supervisory staffs, and separate records.

More importantly, however, are the costs borne by the work activity center individuals as a result of the "physical separation" requirement. For the past sixteen years, individuals with severe disabilities have been denied the opportunity to learn and profit from the example of more skilled work center workers. Experience has shown that the productivity of persons with severe impairments usually increases in the presence of more productive workers. And no factual study, to our knowledge, has demonstrated that the productivity declines for higher functioning individuals as a result of interaction with less able individuals.

The National Easter Seal Society believes that the concept of mainstreaming should be applied to the work center environment. When appropriate, we believe that individuals with severe disabilities should be allowed to work with less severely impaired workers who serve as positive role models. We also urge that the report issued by the Interagency Coordinating Council regarding section 14(c) be given due consideration in this matter. After careful deliberation, the Interagency Coordinating Council has gone on record as being in favor of integrating work center individuals with other work center workers. We believe that, allowed the option to serve these individuals together, facilities will be able to provide much more productive, efficient, and enriching programs to the persons they serve.

For all of these reasons, we recommend that the Fair Labor Standards Act be amended according to the proposals contained in S. 2634. The decision to allow work activity and work center individuals to work together should be based solely on specific needs of the individuals served, rather

than be regulated by outmoded, restrictive legislation. For example, I was recently at an Easter Seal facility in which the staff expressed great frustration over this physical and program separation rule. They insist that many more work activity individuals would graduate to other facility programs, if they were allowed the opportunity to integrate people served, regardless of classification. The staff has asked me to express their plea to you. They merely want the people they serve to have an option and an opportunity presently not allowed by law. Individuals with severe disabilities deserve every opportunity to develop their work and employment skills to the fullest extent possible. With the enactment of S. 2634, there will be one less barrier to that goal.

Senator NICKLES. Thank you very much, Mr. Grunewald and Mr. Cooney.

Mr. Grunewald, how big is the Easter Seal in this? How many centers do you have? Do you happen to have those figures?

Mr. GRUNEWALD. We have 38 work centers.

Senator NICKLES. Thirty-eight?

Mr. GRUNEWALD. Yes.

Senator NICKLES. Are they also sheltered workshops?

Mr. GRUNEWALD. Yes. In most cases, they are a combination of a work center as well as work activity programs.

Senator NICKLES. Presently you have to have segregated facilities?

Mr. GRUNEWALD. Very much so, very much so.

Senator NICKLES. Mr. Cooney, you mentioned you had 44 work activity centers?

Admiral COONEY. Yes, sir.

Senator NICKLES. How many sheltered workshops do you have?

Admiral COONEY. 170.

Senator NICKLES. You have 170 and in 44 of those, you have dual certification?

Admiral COONEY. Yes, sir, that is correct.

Senator NICKLES. You mentioned the number of individuals that were served?

Admiral COONEY. Yes, sir. In 1981, we served 67,000 people in these facilities. 32,000 of those were on the payroll either as work activity center clients or as sheltered workshop clients. The others were provided with evaluations, job placement training or a variety of other services in our very diversified program.

You might be interested to know that in 1981, between our sheltered projects with industry program, we placed 8,000 people into mainstream competitive employment.

Senator NICKLES. Last year alone?

Admiral COONEY. Yes, sir.

Senator NICKLES. You placed 8,000 people?

Admiral COONEY. Yes, sir.

Senator NICKLES. That is fantastic.

Admiral COONEY. We run a very diversified program, and that is why this is of such great interest and importance to us.

Senator NICKLES. You made a very strong and accurate portrayal of the white line. I think you mentioned that it was in Denver?

Admiral COONEY. Colorado Springs.

Senator NICKLES. Colorado Springs.

Admiral COONEY. Symbolic white lines exist in too many places, Senator.

Senator NICKLES. That white line, regardless of whether it is a panel or a building or a painted line——

Admiral COONEY. Or an alley?

Senator NICKLES. What?

Admiral COONEY. Or an alley?

Senator NICKLES. Or an alley, or whatever it may be. Do you feel like that line is there to protect certain individuals and make sure they are not underpaid, or is it there actually prohibiting them from having an opportunity to learn?

Admiral COONEY. I think that white line was created in the best wisdom available at the time the original legislation was passed as a means of getting a variety of government levels involved in a whole new universe of potential trainees and employees.

It was created so that we could say, "OK, here is a special group of people who need special programs and special circumstances. And in order to see that they are not somehow mistreated or exploited, we must create a strict means of accountability and supervision."

But we have learned a lot since that time, and what we have learned has not been just by those of us in the rehabilitation business but society as a whole. Therefore, those rather arbitrary separations are no longer necessary. We can do away with the white line and let the executive at the local level exercise his option as to whether or not he wants separate facilities, making that decision mostly on what is in the best interests of the client who is being served, and give him an opportunity to regard that individual as a unique individual instead of as a member of a group and accelerate his development.

I submit, sir, that there is very little difference when you start splitting between someone who is certified at 40 percent and somebody who is certified at 50 percent. There is very little difference, and it may be the differences in opportunity, motivation and the other contributions that a more stimulating environment can give to the individual. That is what the white line is depriving him of.

Senator NICKLES. Do you think that by having this segregation those persons who would be classified under the work activity centers, if they were in that category and they were not allowed to "progress" or to work with others and they were told that their work was "inconsequential," would possibly develop the type of thinking that, "Well, this is all I could ever do," and not be able to pull themselves up, where quite possibly they may be an individual that might be able to work and progress into a more productive status?

Admiral COONEY. Well, it has been my experience in life as a manager and leader of men and women in the Armed Forces and now in business that people tend to achieve the expectations which are set for them by other individuals. And if we say, "You are a loser because you are a workshop person," they will stay a loser all their lives.

If we say, "You are an individual who has a unique potential and we expect you to perform better; come over here and work with someone who will cooperate with you and show you how," that level of expectation, both inner and outer, will increase and greater goals will be achieved.

Senator NICKLES. I commend you for that statement. I could not agree with you more.

Mr. Grunewald, I appreciated your comments and would concur with your statement concerning individuals versus clients and opportunities. Just recently, I visited with an individual and he said he was looking for the opportunity to learn so he could earn. He said, "As long as you will let me learn"—and he was a handicapped individual—he said, "As long as I have that opportunity to learn, I will earn." But he said, "If you prohibit me from learning, I can never earn and have the opportunity to pull myself up."

Admiral COONEY. May I give you a specific example? We have in the Goodwill movement each year sort of a contest, I suppose, to identify the client who makes the most progress and then goes out into society. Last year, the young man that won that award—and that is a significant award, to be selected out of so many—was severely injured as a result of having shot himself when he was a child.

He came from a socially disadvantaged home. He never survived in school because he was not treated as a potentially successful student, and he devoted his life to sitting at home and watching television and could not even communicate. He was enrolled in Goodwill as a work activities client. We taught him to communicate and we taught him to read.

He moved into the sheltered workshop, and progressed even farther. He eventually qualified as a high school graduate, competed on a civil service examination, and is today a security watch officer in a major airport in this country. If we had not had a workshop for him, he would still be sitting in his bedroom watching the soaps. If we had not had a way in which he could move across that white line, he would still be packaging bolts and nuts.

Today, he is doing an important job for which he has been commended by the Federal Aviation Administration, and he is no longer being supported by the taxpayers. He is earning a living.

Senator NICKLES. That is great.

Mr. Grunewald, one additional question. I think you mentioned that you have 38 facilities?

Mr. GRUNEWALD. Yes.

Senator NICKLES. How many people are in the work activity centers?

Mr. GRUNEWALD. A little over 3,000.

Senator NICKLES. In sheltered workshops, too?

Mr. GRUNEWALD. No; that is a total combination.

Senator NICKLES. And you have both?

Mr. GRUNEWALD. Yes. Almost all are a combination of work centers and work activities.

Senator NICKLES. Gentlemen, we appreciate your input and expertise, and the work you are doing on behalf of those individuals and society as a whole. I think you and your associations are really to be commended for the very positive input that you are putting into society.

Admiral COONEY. Thank you very much, sir.

Mr. GRUNEWALD. Thank you.

Senator NICKLES. Thank you.

Our next guest is James Gashel, director of governmental affairs for the National Federation of the Blind.

Mr. Gashel, is that pronounced correctly?

Mr. GASHEL. You got it just right, Mr. Chairman.

Senator NICKLES. Good. Welcome; we appreciate your being with us today.

STATEMENT OF JAMES GASHEL, DIRECTOR, GOVERNMENTAL AFFAIRS, NATIONAL FEDERATION OF THE BLIND, BALTIMORE, MD.

Mr. GASHEL. Thank you, sir. My name is James Gashel. I am director of governmental affairs for the National Federation of the Blind. I have submitted a prepared statement which I would ask would appear in the record in full.

Senator NICKLES. It will be in the record, as well as the other statements that have been given by our panelists.

Mr. GASHEL. I will just proceed to summarize.

Senator NICKLES. Thank you.

Mr. GASHEL. Mr. Chairman, I guess I have a unique role here, since we speak from the viewpoint of workers, not managers. NFB's members are the rank-and-file blind. Thousands are paid under the 14(c) exemptions.

We oppose S. 2634. Its results, in our opinion, would not be beneficial either to productive or nonproductive handicapped people. We support reforming section 14(c) of the FLSA because we think the totality of this law is neither sound in theory nor fair in its administration. However, in our judgment, it would be detrimental to handicapped people to make the changes proposed for paragraph (3) of section 14(c) without recasting the entire statute in the process.

Here is why we feel that way. There are five basic points. One, S. 2634 would effectively repeal the 50-percent minimum wage standard of section 14(c)(1). The repeal would be caused when managers mix clients exempt under section 14(c)(3) with workers exempt under section 14(c)(1). Mixing, or the team approach that we have heard of this morning, would be used to achieve lower rates of productivity. This, then, would justify waiving the (c)(1) exemption, and that would then waive the 50 percent or higher minimum which is guaranteed under (c)(1).

The group would then be paid less than the (c)(1) exemption under a (c)(3) exemption—less than 50 percent of the minimum wage. Neither Congress nor the Department of Labor could assure

any handicapped worker the continued protection of the 14(c)(1) exemption if this legislation is passed as proposed.

Managers would create the groupings of clients and workers—the teams that we have heard of. Managers would measure their productivity. Managers would certify everything to the Department of Labor, and no one else could ever know if it was justified.

Two, S. 2634 would result in lower wages for handicapped workers. Productive workers would be forced to slow down in order to match their output with the severely limited nonproducers absorbed from the work activity center. Productivity is the basis for pay under section 14(c). Hence, S. 2634 asks handicapped workers to take a pay cut in order to accommodate the lesser skills of the nonproducers and the desires of management to group the workers and clients to achieve its own objectives.

The policy of current law says accurately that handicapped people are not a homogeneous class in terms of productivity. Some can produce and others cannot. Some can work; others need therapy provided by the special centers. The mixture of capacities caused by S. 2634 would make everyone in the work force subject to the lowest common denominator of productivity. The losers would be the workers and the clients.

Three, S. 2634 would make enforcement of section 14(c) more difficult. Separating productive workers from clients who need therapy provides the appropriate program for both groups. Separation is thus an enforcement mechanism to prevent exploitation of the members of either group—clients or workers.

Compared to many difficult to enforce FLSA standards, separation is clear-cut. By contrast, S. 2634 might, at best, require separate recordkeeping. There would be no WAC—nothing other than papers to keep separate—and in the bargain handicapped workers are being asked to accept less than half of the minimum wage as long as it is shown on the appropriate form.

Four, S. 2634 would ignore the special needs of handicapped workers and handicapped clients. Regular workshops are primarily places of employment where workers are told to maximize their productivity because this will maximize their wages. This is not consistent with S. 2634, which would prevent maximum productivity by means of having nonproducers in the same work force. This is unfair to those who are being told and expected to maximize their productivity.

On the other hand, the clients who really need the therapy are being ignored because they are being expected to achieve greater and greater heights of productivity. And what about their therapeutic program—the special, exclusive, planned and designed program now established under section 14(c)(3)? These requirements are being repealed by S. 2634. In their place, we would get a common work program—work for all—and no longer would we have a program planned and designed for the special needs of anyone, except management, who would get more work and pay less for it.

Five, S. 2634 is not supported by section 504 of the Rehabilitation Act. This law says that federally assisted programs may not discriminate against qualified handicapped people. It does not ban dis-

tinctions on the basis of productivity. If it did, then the totality of section 14(c) could be found discriminatory.

Nor does section 504 require integration of everyone. If it did, then sheltered workshops could not exist separately from regular industries or schools or hospitals or anything else. Section 504 does not abolish regular sheltered workshops, nor does it abolish or should it abolish work activity centers.

Mr. Chairman, we urge you not to pass S. 2634, while leaving the rest of section 14(c) alone. Do not create a worse arrangement for us than we already have today. Several studies have shown that we need more wage protection, not less. Enforcement should be strengthened, not lessened. Yet, these would be the undesirable and unhappy results of enacting S. 2634, in our opinion. Thank you very much.

[The prepared statement of Mr. Gashel follows:]

National Federation of the Blind Testimony Before the Subcommittee on Labor, Committee on Labor and Human Resources, United States Senate, August 11, 1982

Mr. Chairman, my name is James Gashel. I am Director of Governmental Affairs for the National Federation of the Blind (NFB). My address is 1800 Johnson Street, Baltimore, Maryland 21230. I appreciate the opportunity you have provided me to be heard during this review of one of the Fair Labor Standards Act (FLSA) requirements related to work activity centers.

In a moment, Mr. Chairman, I will present our position on S. 2634, the bill which is before the Subcommittee today. First, however, I will explain the source of our interest in the subject matter of this legislation. NFB is a membership organization of blind persons. We are the rank and file blind. Thousands of our members do not have jobs at all. Those who do work are typically underemployed. Several thousand work in sheltered workshops, and well over a third of these individuals are paid under the subminimum wage provisions of Section 14(c) of the FLSA. Each of these blind persons is a possible target for subminimum wages because their employers (sheltered workshops) either hold or could qualify for the special certificates issued by the Department of Labor. In short, we speak from the vantage point of the people we represent -- blind workers. Other groups who will testify in this hearing will present the management side of the issues raised in S. 2634.

Mr. Chairman, we are opposed to enacting S. 2634 in the absence of a more forthright and thorough-going attempt to remedy the inequities present in Section 14(c) of the FLSA. Proponents argue that the amendments to Section 14(c) will promote integration of all handicapped individuals in common work sites. This is presented as furthering the federal policy against discrimination on the basis of handicap. What they do not explain,

however, is the devastating impact this proposal would have on the wages of handicapped workers.

As presently enacted, Section 14(c) applies to a very broad range of workers who, Congress felt, might suffer curtailment of employment opportunities if their employers are required to pay the minimum wage under Section 6 of the FLSA. Putting to one side the question of whether the concept of Section 14(c) is valid, there is plenty of evidence pointing to unfair treatment of workers and abuses of the current law, whether intentionally or unintentionally. Amendments to Section 14(c) should attack these problems, not exacerbate them. However, S. 2634 will, in our judgment, promote a further deterioriation of the limited protection which now exists for workers who are the targets of Section 14(c).

Let me hasten to note, Mr. Chairman, that we do not come before this Subcommittee to defend either the theory or the administration of Section 14(c). Both are subject to serious challenge. We do not support Section 14(c) in its present form; nor do we believe that its administration is equitable. But, S. 2634 is not the kind of reform that is needed. In fact, this is not reform at all. Rather, it would be a backward step to enact S. 2634 absent other amendments. Abandoning the policy of separating regular sheltered workshops from work activity centers as proposed in S. 2634, would eliminate a wage protection feature to the detriment of handicapped workers. Our specific comments follow.

ANALYSIS OF S. 2634

(1) Eliminating the physical separation of work activity centers from regular sheltered workshops in the manner proposed in S. 2634 will actually bring about a repeal of the wage protection provisions of paragraph (1) of Section 14(c) of the FLSA. Essentially, S. 2634 calls for eliminating the

concept of a work activity center, substituting instead a "work activity program." In addition, the "program" need not be "planned and designed exclusively for therapeutic purposes." Under the bill, the "program" would qualify for pay rates below the 50% or higher minimum wage requirement of paragraph (1) of Section 14(c), as long as the handicapped participants in it receive some therapy.

On the face of it, adopting the concept of a work activity program as opposed to a work activity center may seem to be a mere change in terminology. However, a review of the present statutory construction and requirements of Section 14(c) will show that the proposal of S. 2634 would be quite devastating.

Paragraph (1) of Section 14(c) requires that the exemption granted to a workshop may not be less than 50% of the statutory minimum established by Section 6 of the FLSA. Depending upon the productivity of the workforce in any given workshop, the paragraph (1) exemption granted by the Secretary of Labor may actually require a floor wage which is higher than 50% of the statutory minimum. However, a paragraph (1) exemption will not be lower than 50% of the minimum. This is the exemption rule which applies to the workforce of an entire workshop.

Paragraphs (2) and (3) of Section 14(c) permit exemptions below the standard of paragraph (1). Paragraph (2) permits individual worker exemptions, if certain conditions are met. These are not group exemptions, however. The work activity center exemption is issued under paragraph (3). It covers a group of workers whose productivity is inconsequential and incidental to the therapeutic purposes of the program. In fact, therapy is supposed to be the "exclusive" activity of the center, and the program is supposed to be "planned and designed" for this and no other purpose.

In sum, there are presently two classes of group exemptions under

Section 14(c). The first is the paragraph (1) exemption, requiring no less than 50% of the minimum wage. The second is the paragraph (3) exemption, permitting pay rates in work activity centers to be below the paragraph (1) exemption. The difference in the two groups of workers is supposed to be their productivity. Those who work in a regular workshop are more productive, and the law recognizes this by protecting them with a floor wage which cannot be below 50% of the minimum, but may be higher. On the other hand, the work activity center clients are not productive; hence, the law does not require a predetermined floor wage. Thus, the rate of pay for work activity center clients is supposed to be based only on individual productivity, without any other form of wage protection such as the 50% or higher minimum which applies to the workers in a regular workshop.

In light of this discussion, the change proposed in S. 2634 threatens to obliterate entirely the minimal wage protection for handicapped workers now provided in the paragraph (1) exemption. Under the bill, a paragraph (3) exemption covering regular sheltered workshop workers could be granted, as long as they are provided some therapy. But, bear in mind that under present law, the wages of these workers would be protected under the paragraph (1) exemption. Thus, the net effect of S. 2634 would be to provide managers with a convenient means of circumventing paragraph (1), in favor of the lower wages permitted under paragraph (3). This is an entirely undesirable and unacceptable policy. For example, if a regular sheltered workshop has a paragraph (1) exemption which permits 65% of the minimum wage, what would prevent a manager from grouping several workers into a lower class of productivity and qualifying them for a paragraph (3) exemption at, say 40% of the minimum wage.

Nothing in S. 2634 would prevent this from happening. Yet, the workers in this example would be deprived of the minimal protection which they now have under the paragraph (1) exemption. Under the circumstances, the paragraph (1) exemption becomes meaningless and Congress would be repealing the 50% floor wage placed in the law in 1966.

(2) Eliminating the physical separation of work activity centers from regular sheltered workshops in the manner proposed in S. 2634 will actually bring about reduced wages for handicapped workers. The concept of Section 14(c) is to base wages on individual worker productivity as compared to that of nonhandicapped workers for essentially the same type, quality, and quantity of work. This emphasis on productivity in relationship to wages has been cited as the virtue of Section 14(c). In this connection, the promoters of S. 2634 want to integrate persons with inconsequential productivity alongside productive handicapped workers. What they do not disclose, of course, is the price to be paid and who will pay it.

Handicapped workers are as much entitled to wage protection as are others in our nation's labor force. They should be held harmless from the consequences of integrating nonproducers into the regular work environment. By means of the physical separation, along with the various certification procedures presently installed in Section 14(c), Congress intended to assure some degree of protection against wage exploitation. However, all semblance and effect of this protection will be lost if the policy of separation is now abandoned. Separation recognizes that handicapped workers are not a homogeneous group. Some can be productive, others cannot be.

Separating them is an equitable mechanism for assuring the members of each group the opportunity to earn according to their productivity, which is the purpose of Section 14(c). Combining the groups would overlook the actual distinction between productive handicapped workers and handicapped clients who need therapy. This distinction is not arbitrary or useless -- it is a matter of equity and justice.

All of the recent studies agree that wages in sheltered workshops (even for the most productive workers) are inadequate. A 1979 report, issued by the Department of Labor, said that over half of the workers in workshops for the blind were paid less than $1,500 annually. Enactment of S. 2634 would force additional wage reductions on these workers. Bear in mind that these handicapped workers are not protected by collective bargaining agreements or the minimum wage. The only form of wage protection which they have is the productivity standard of Section 14(c). If they are now forced to carry the nonproducers, their wages will inevitably go down. How much they will suffer will depend upon the number of nonproducers who are placed in the integrated work activity program.

(3) Eliminating the physical separation of regular sheltered workshops from work activity centers will actually make Section 14(c) administratively more difficult to enforce. Reports of the Department of Labor and the General Accounting Office confirm that Section 14(c) is fraught with violations. This is not uncommon with other provisions of the FLSA, as well. Enforcement of these laws is often difficult, do in large part to their complexity. This is where the separation of work activity centers from regular workshops becomes important.

Separation is a rather clear cut mandate -- something which is subject to easy monitoring. By contrast, S. 2634 would only require separate

record keeping. There would be no work activity center -- no separation. All there would be is a piece of paper -- just another form. This is at the heart of the administrative problem with Section 14(c) as it exists today. S. 2634 would allow additional exemptions from even half of the minimum wage, merely by means of a piece of paper. Handicapped workers, no matter how knowledgeable they are, can never control such a system. Managers have free reign, as long as the proper form is in place to satisfy the Department of Labor. Where are the checks and balances? The answer is simple and obvious -- there are none.

(4) The physical separation of the regular sheltered workshop from the work activity center is essential to protect the integrity of both operations. The regular sheltered workshop is designed to employ handicapped workers who have the capacity to produce certain commodities. It is not a therapy center. It is a place of employment. At least in theory, the pay is based on productivity and represents a primary source of income for the handicapped workers. The individuals remain at the workshop essentially for this reason -- their work puts food on their tables. It does not matter in the slightest that the employer is a so-called nonprofit institution. The relationship is employer to employee. Working in the workshop is an ordinary job.

On the other hand, the clients of a work activity center are receiving therapy. Their productivity is inconsequential; hence, their earnings from the center are minimal. The clients are not financially dependent upon the fruits of their own labors. The primary source of their financial support is income maintenance programs such as those of the Social Security Administration. The benefits of the center are therapeutic, not remuneration. By law, productivity in a work activity center is "inconsequential."

Section 14(c) recognizes this distinction between a regular sheltered workshop and a work activity center by authorizing different categories of minimum wage exemptions. The physical separation provides some degree of assurance that the production workers will have the opportunity to maximize their productivity, while the clients of a work activity center will receive the therapy and training they deserve. Removing the separation will simply mean a blending of the productive workforce with the clients who need therapy, not work. Both groups will lose their identities and distinctive programs in the process.

In this connection, it is worth noting that S. 2634 eliminates more than just the physical separation of a work activity center from a sheltered workshop. Consider, for instance, the significance of discarding the requirement in paragraph (3) of Section 14(c) that a work activity center is a unit "planned and designed exclusively" for therapeutic purposes. In our judgment, there is more than just a little significance in the fact that S. 2634 requires only that a work activity program "provide therapeutic activities." This is a far cry from a center which is "planned and designed exclusively" for therapeutic purposes. Yet, this is exactly what S. 2634 would abolish. In the process, the special services, which are "planned and designed" to aid individuals who are most severely and multiply handicapped, would be lost. In place of this assistance we would find a work program -- just like the work of a regular sheltered workshop -- but of course the wages would be lower.

(5) The physical separation of regular sheltered workshops from work activity centers does not promote discrimination on the basis of handicap. Section 504 of the Rehabilitation Act of 1973, as amended, was designed to eliminate artificial barriers to equal participation by handicapped

individuals in federal and federally assisted programs. Section 504 was not designed to eliminate all forms of distinction between handicapped individuals and those without handicaps. Moreover, Section 504 specifically does not call for eliminating distinctions which programs may legitimately make among classes of handicapped individuals.

The separation of regular sheltered workshops from work activity centers is not an artificial or discriminatory barrier. It is based on a strong body of evidence which shows substantial differences between the production environment of a sheltered workshop and the therapeutic setting of a work activity center. There is no more discrimination in separating these two situations than there is in distinguishing between a school and a factory. Section 504 does not mean that all handicapped individuals must be treated precisely alike; only that they must be given an equal opportunity if otherwise qualified.

If Section 504 argues for physically combining work activity centers with regular sheltered workshops, then it argues with equal force that regular sheltered workshops should be combined physically with factories in the competitive market. In fact, if we extend the theory used by the promoters of S. 2634, we would have to abolish all sheltered workshops (not just work activity centers) since they constitute segregated industries. But, it is doubtful that Section 504 requires the elimination of sheltered workshops, and for the same reasons, it does not require eliminating work activity centers. If there is a valid reason at all for changing Section (14)(c)(3), it exists despite the nondiscrimination mandate of Section 504. In short, the objectives of S. 2634 must stand or fall on their own merits, rather than seeking to beg the question by alleging a nondiscrimination mandate.

RECOMMENDATIONS AND CONCLUSION

(1) S. 2634 should not be enacted in its present form. Congress should continue the policy of requiring that regular sheltered workshops be separated physically from work activity centers. Moreover, the concept of a work activities center should be maintained in the absence of a forthright and thorough-going reform of Section 14(c) of the FLSA.

(2) Legislation aimed at a complete reform of the philosophy and operation of Section 14(c) should be prepared, and Congress should act on it as soon as possible. One option to be considered in Section 14(c) reform might be an administratively approved waiver of the separation requirement in paragraph (3), so long as conditions for waivers are carefully prescribed in the statute, and the concept of a separate work activity center is maintained as a general rule.

The need for reform, Mr. Chairman, was pointed up in your statement accompanying the introduction of S. 2634. You said: "What may have made sense in 1966 is not good policy or in the interests of the handicapped people in 1982 due in part to major changes in the position of handicapped people in our society and to advances in our state of knowledge about what handicapped people can do. Further, there has been an enormous change in the types of people being served in and being employed by rehabilitation facilities and other institutions employing severely handicapped people."

While these remarks were aimed specifically at the present requirements of paragraph (3) of Section 14(c), I submit that they also constitute a fair statement with respect to the totality of this statute. Indeed, there have been substantial changes in the handicapped workforce, not to mention the methods of production which have enabled many of us to achieve

productivity never dreamed of when Section 14(c) was originally enacted and subsequently amended. This is especially true of those workers who are blind and yet the targets of the Section 14(c) exemptions. For these workers, the certificates issued to their employers by the United States Department of Labor are no longer a ticket to employment opportunities. Rather, they are a license for wage exploitation by managers of sheltered workshops. I recognize that this hearing may not be the place to argue the case for exempting the blind from Section 14(c) of the FLSA. Nonetheless, we ask you to include this as a matter of consideration during any reform of the present statute.

Mr. Chairman, it is obvious that you have a personal commitment to give a better shake to workers who, becuase of their physical or mental handicaps, are paid less than the federal minimum wage. We salute you for this. The time has come for Congress to re-evaluate the subminimum wage policy and to restructure the law in order to put an end to the wage exploitation which it now permits. S. 2634 would not end this exploitation, it would only compound the problem. Passing this bill is a sure way to lower the wages for handicapped workers. Congress should not permit this, even if it would serve the convenience or motives of management.

Senator NICKLES. Thank you.

I would disagree with several of your statements, or possibly their conclusions, and particularly, I guess, with the general thrust of it, thinking that if we integrated the work activity center individuals in with the sheltered workshop individuals, there will be a dramatic decrease in productivity, and therefore a decrease in wages for those individuals who are now working under the sheltered workshop activities.

I guess a lot of the thrust of your statement seemed to say that this would be for the benefit of the managers of these businesses, at the expense of the individual. I find that very contrary to our previous panelists today, whom I believe were very sincere individuals who are working very sincerely in trying to help disadvantaged or handicapped individuals.

The thrust of my legislation—at least I can speak for myself—is to try to open up doors of opportunity for handicapped persons and not to have artificial Government regulations that would mandate a separation. They could not be integrated and they could not try to pull themselves up by a role model that might possibly be a little more productive, therefore leading them to become more productive.

I appreciate your input and several of the comments you have made, but would disagree with the general thrust that this would not work to the advantage of the severely handicapped person. I think it would be to their advantage, and not at the expense of the persons who are now working under the sheltered workshop or other handicapped persons.

There is a little different thrust of where we are coming from.

Mr. GASHEL. Right; we are coming from different perspectives. You know, I do not question the sincerity of anyone who has presented testimony here today. I think that we have heard from honest and thoroughgoing professionals.

We have a different assessment of the effect of this legislation, though, and I think ours is as honest and thoroughgoing and professional, I hope, as theirs is. So, you know, I do not suppose they would question our sincerity either.

We are all sincere people in this, but we have a totally different perspective on what the effect of this legislation would be.

Senator NICKLES. I understand.

Mr. GASHEL. There have been some references made to the fact that we are dealing with nonprofit institutions. Now, of course, we are—in terms of their tax status. But, you know, there are other ways of looking at these institutions.

I did an analysis of the 104 workshops affiliated with the group known as National Industries for the Blind. They are the sheltered workshops that provide work for the Government under the Javits-Wagner-O'Day Act.

Senator NICKLES. How many workshops?

Mr. GASHEL. 104 in that system; there are 104 in that group. So, it was every workshop, and what we looked at was their filings with the Internal Revenue Service—their 990 information returns. This was for the most recent year we could get, which was 1977 when we did it. But I think you would find the same thing would

be true of any other year that you looked at, and that is that out of that 104, 70 percent had excess income over expenses.

Now, that is not uncommon. We looked at the balance sheets of some of those, and some of them had accumulated resources, you know, upward of $55 and $60 million. That is pretty good accumulation for a nonprofit institution.

I am not suggesting that they are being nonprofit in a dishonest sense, for they are not. But a lot of these institutions do have an operating margin in their sheltered workshop and do, in fact, have excess income over expenses in their sheltered workshop.

I think that that kind of thing has to be examined in light of section 14(c). We are not necessarily dealing here with shoestring operations, and the handicapped workers feel that they certainly ought to get more than just a piece of the shoestring in the bargain.

Senator NICKLES. How many work activity centers is your association associated with?

Mr. GASHEL. Well, let me say that in the workshops for the blind, there are presently very few work activity centers. But a real concern about S. 2634 is the invitation to creating a whole lot more of them, because it is, as I testified in point No. 1, a way around that 50 percent minimum standard under (c)(1).

So, it is not necessarily the fact that there are so many work activity centers today, but the fact that there probably would be a whole lot more in our workshops that affect our people as a result of this legislation.

Senator NICKLES. Goodwill said they had something like 67,000 people that were involved. Do you think they are in that to exploit those people and to generate revenue for themselves?

Mr. GASHEL. No, I do not. I do believe that some exploitation goes around. I do not say that about Goodwill. I am not really that knowledgeable. My universe of industries that we deal with are primarily the workshops for the blind in this country and I have told you what I know of the profit status of those groups.

I do believe that in some of those settings and in some of those workshops, actual exploitation does occur. Some of it is unintentional; some of it is intentional.

Senator NICKLES. Staff just handed me a note that mentions the fact that, in our opinion, only a relatively small number of these institutions would have any significant endowment from which to operate off of.

We had one from Oklahoma—a very small activity center—that I do not want to say is shoestring, but would be very marginal. So, if, by regulation, you are mandating additional staff, or if you mandate separate facilities, you may be curtailing their accessibility to be able to serve more people. I think that was mentioned by all of our previous panelists; they would like to, and they feel like they could, be of greater community benefit to the handicapped community in being able to serve more people if they did not have this arbitrary "white line" dividing the work activity centers from the sheltered workshops.

We would like to not do anything whatsoever to discriminate or hurt; we would like to take that discrimination away. We are talking about handicapped individuals being able to work themselves

through the process to where they can become more productive citizens, and pull themselves up not just in their productive capabilities, but also in their self-esteem and their self-value.

Again, I guess I would say I appreciate your input, although I would disagree with your conclusion; that by passage of the legislation, we are going to be opening up doors for thousands of handicapped individuals that, right now, the Government is kind of drawing the line on and somewhat closing the door.

Mr. GASHEL. Well, I think I would just respond in saying this. Surely, there is no question that the people who can be served by work activity centers should be, and we ought to work to build up all of the funding mechanisms we can, including Rehabilitation Act funding, State grants, charitable contributions, and so forth, in order to insure that those people are, in fact, served.

However, the thrust of this legislation heads us in a direction of having those people be served at the expense of handicapped people who are employed and trying to make a buck, and we just do not believe that that is the right approach. We think that other laws and charitable contributions should take care of the resources for this particular group of handicapped people who do, in fact, need therapeutic services.

I guess I would round it out by finally making one other point. You know, we are really concerned about taking people who the law says need therapy in a program planned and designed exclusively for that purpose, and then just saying, well, we are just going to put them in a common work program and work them, except that we are not going to guarantee them 50 percent of the minimum wage; we are going to maintain the law at less than 50 percent of the minimum.

I guess we would certainly support integrating work activity centers with regular sheltered workshops, as long as we keep the 50 percent minimum rule and say everybody, including the work activity centers people, are paid at least 50 percent of the minimum wage. Then we will support it.

Senator NICKLES. You still may be closing that door, and I think we are going in circles, so there is no need to carry it further.

Mr. GASHEL. Yes, sir.

Senator NICKLES. Mr. Gashel, we do appreciate your input. Your statement will be put into the record in full, and we appreciate your being with us today.

Mr. GASHEL. Thank you.

Senator NICKLES. Thank you.

For our next and final panelists, we have Vincent Gray, who is a member of the Governmental Affairs Committee and executive director of the Association for Retarded Citizens, and also Harvey Goldman, who is executive director for the National Association of Jewish Vocational Services.

Mr. Gray, would you care to proceed, please?

STATEMENT OF VINCENT C. GRAY, MEMBER, GOVERNMENTAL AFFAIRS COMMITTEE, ASSOCIATION FOR RETARDED CITIZENS OF THE UNITED STATES, AND EXECUTIVE DIRECTOR, DISTRICT OF COLUMBIA ASSOCIATION FOR RETARDED CITIZENS, WASHINGTON, D.C.; AND HARVEY P. GOLDMAN, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF JEWISH VOCATIONAL SERVICES, NEW YORK, N.Y.

Mr. GRAY. Thank you, Senator. We have submitted a statement that we would like to enter into the record.

Senator NICKLES. It will be.

Mr. GRAY. As far as my testimony today is concerned, I would like to briefly summarize that statement and kind of extemporize on a few points that we attempted to make.

Senator NICKLES. Thank you.

Mr. GRAY. I am Vincent C. Gray, the executive director of the Association for Retarded Citizens in the District of Columbia. I am pleased to speak today on behalf of the Association for Retarded Citizens of the United States, which is now comprised of some 2,000 units and more than 200,000 members across this Nation.

As far as the District of Columbia ARC is concerned, we not only serve as a public advocacy voice for mentally retarded people, but we also operate four work activity centers which daily serve some 300 mentally retarded people. We provide a variety of work opportunities, including a vast array of mailing service operations, electrical and mechanical assembly, and in addition to that, sign making and rubber-stamp making for commercial use.

For the past 10 years, we have participated in the Javits-Wagner-O'Day Act, which, as you probably know, is a Federal set-aside program which allows the government to purchase services and products from workshops serving handicapped people. And more recently, we have had a similar law enacted in the District of Columbia which now provides the same opportunities through the District of Columbia government.

Let me say at this point that the Association for Retarded Citizens wholeheartedly supports S. 2634, which will permit the employment of handicapped individuals in common areas and, most particularly, will allow work activity center clients to function alongside higher functioning sheltered employees.

We provide that support from what we believe to be a unique perspective. Contrary to what the gentleman said before me, he is not the only one in this group today that represents consumers. First and foremost, we view ourselves in the asssociation as representing the needs and rights of mentally retarded people. As a part of that role, some of our units do provide work activity center services. Today we are providing our support on behalf of the entire 6.5 million retarded citizens in this nation.

As we look at the definition of work activity centers, as you have pointed out in your statement, we find certain terms that indeed are outmoded and are in need of change. One in particular—the notion of productive capacity being inconsequential—we think is no longer contemporary and, indeed, certainly exemplifies the need for the changes that have been proposed in S. 2634.

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We also need to look at the broader changes which have occurred in the last 16 years with regard to services to handicapped people. First and foremost has been the thrust toward deinstitutionalization.

In 1966 when these amendments were passed, we had some 225,000 mentally retarded people in institutions in this country. Today, with the move away from large, congregate living, we now have less than 140,000 mentally retarded people living in institutions. Many of those retarded citizens have returned to their communities and indeed are being served, and served well, by work activity centers.

That, we believe, supports the right that has been underscored of retarded people, as well as other handicapped people, to live in the least restrictive environment. We have seen that same principle embodied in a landmark piece of legislation enacted by this Congress in 1975—the Education for All Handicapped Children Act, which has opened the doors of education to handicapped children and allowed many handicapped children to move from self-contained buildings and self-contained classrooms into the mainstream where they can be served along with their nonhandicapped peers—an experience that we believe has been extremely beneficial to those handicapped students.

As was alluded to earlier, we believe section 504 has relevance here. But our position is that section 504 would be well served in terms of its purposes by allowing the integration of handicapped people in work activity centers with those in regular work programs.

Section 504 speaks to antidiscrimination in program accessibility, and we believe that purpose would be well served by the mixing of those populations.

Underlying all the gains that we have seen have been two fundamental precepts. One is the principle of normalization propounded by Wolf Wolfensberger some 12 years ago, which says that handicapped people should be given every opportunity to experience normal relations and normal experiences, just like anyone else, and the developmental model, also initially propounded by Wolf Wolfensberger and refined by our ARC national executive director, Dr. Philip Roos. That model says we should view people as capable of learning and growing, and should provide every opportunity for them to do that.

As a final point, we have seen in the last 16 years a virtual explosion of new technology in the field of work activity centers, workshops and sheltered employment. Just as an example, Dr. Mark Gold has developed the approach that is referred to often as task analysis, through which he has dramatically demonstrated, by taking seemingly complex tasks and breaking them down to their simplest components, that he can train some of the most severely retarded individuals to become productive workers.

In fact, his dramatic example or prototype is a bicycle brake that included some 24 steps, based on his analysis. He was able to demonstrate that a group of severely retarded people indeed were capable of assembling and disassembling that bicycle brake on the basis of a new technological approach.

We have also seen that kind of technology embodied in job engineering. In fact, I am reminded of a colleague of mine who was accused of diminishing productivity by introducing into an assembly line so-called low functioning people. He had a contract in which he was producing furniture, and there was a point along the way where a machine operation was required. This normally had been fulfilled by one person.

He introduced so-called low functioning people into the assembly line. But, in order to compensate for their lower productivity, he introduced three people at that point in the assembly line.

Senator NICKLES. What people?

Mr. GRAY. Three so-called low functioning people.

Actually, the final outcome was an increase in productivity of the assembly line, and it had no adverse effect at all on the productivity of the so-called higher functioning individuals.

Let me conclude, Senator Nickles, by saying that our association wholeheartedly supports this legislation. We hope that it will be enacted. We think that it will increase the productivity of work activity center clients through the role modeling that will go on.

We have no evidence that there will be any negative impact on the productivity of higher functioning people. We think it is consistent with other thrusts in this country in the educational and residential programing arenas. We cannot say enough about the need for it to be enacted and would be prepared to do anything to support it.

[The prepared statement of Mr. Gray follows:]

TESTIMONY

on

SECTION 14 (c)

of the

FAIR LABOR STANDARDS ACT

Respectfully Submitted

to

THE LABOR SUBCOMMITTEE

of the

U.S. SENATE HUMAN RESOURCES COMMITTEE

Presented By

THE ASSOCIATION FOR RETARDED CITIZENS OF THE U.S.

Witness:

Mr. Vincent C. Gray

Member, Association for Retarded Citizens'
Governmental Affairs Committee

August 11, 1982

Mr. Chairman, I am Vincent C. Gray, Executive Director of the District of Columbia Association for Retarded Citizens. DCARC is a state level member of the Association for Retarded Citizens of the United States which now includes 2000 state and local units and more than 200,000 members.

The DCARC was formed in 1950 by parents of mentally retarded citizens frustrated by their inability to secure educational and other vital developmental services for their children. For more than three decades, DCARC has served as the public advocacy voice for the District's 18,000 citizens who are mentally retarded. And indeed we have witnessed major gains in services for mentally retarded residents of the District.

In 1957, DCARC developed its first direct services program, a small work activity center serving eleven mentally retarded adolescents and adults. Over the past twenty-five years, DCARC vocational and employment services have expanded enormously. Today, DCARC operates four work activity centers and sheltered workshops which daily serve more than 300 mentally retarded persons. These centers provide work adjustment training for persons who require basic development in work habits and work attitudes. And, additionally, they provide employment for those mentally retarded persons unable to handle competitive jobs or for whom no work opportunities currently exist in the labor market.

Work opportunities provided in our centers include a vast array of mailing services operations, electrical and mechanical assembly, embossed and engraved sign making and production of rubber stamps for commercial use. In the past year, wages to these persons totaled more than $500,000. Those served include individuals whose disabilities principally involve severe or moderate levels of mental retardation.

For ten years, we have participated in the Javits-Wagner-O'Day program which was designed to stimulate work opportunities for severely handicapped persons by creating a set-aside market on federally purchased products and services in a vast array of areas. More recently, the District has enacted a similar law the "Employment Opportunities Act", and we now are actively participating in the program created by this legislation.

Recent Department of Labor (DOL) statistics indicate that nationally there are almost 4500 sheltered workshops serving approximately 190,000 handicapped persons. Over 75 percent of these facilities are work activity centers, which serve 132,000 clients. Approximately two-thirds of our nation's sheltered workers are mentally retarded persons.

Our Association strongly supports S. 2634, the proposed legislation to permit the employment of handicapped individuals in common areas. This bill will allow work activity center clients to work alongside higher functioning sheltered workshop employees. We strongly endorse this revision in the Fair Labor Standards Act.

The ARC supports S. 2634 from the dual perspectives as advocates on behalf of all mentally retarded people employed in work centers and as major providers of work center services. Approximately 300 local ARC units operate sheltered workshops and work activity centers. Our experience as direct service providers and as parents and advocates of many sheltered workshop employees presents an unusual perspective on this issue.

Section 14 (c) of the Fair Labor Standards Act (FLSA) is now 16 years old. During the last 16 years, there has been fantastic change in attitudes about sheltered employment, a large expansion in the numbers and types of facilities and in the types of handicapped workers employed in such facilities. For example, in 1966 approximately one-third of all sheltered workers were mentally retarded. Mentally retarded workers now make up two-thirds of all

sheltered workers. There are many reasons for this, not the least of which is the so-called deinstitutionalization thrust of the past 16 years, which has brought many retarded individuals back into the community. Additionally, a large number of more severely retarded persons have gained access to programs that simply wouldn't serve them 16 years ago.

Attitudes and programs have shifted to the point where the required separation of work activities and sheltered workshop workers is simply outmoded. It is now a common practice in the special education and training fields to provide programs in the least restrictive environment (LRE). Handicapped students are successfully gaining access to regular public school classrooms and doing well. This practice is actually required, when appropriate, by P.L. 94-142, the Education for All Handicapped Children Act. This policy is one that should be adopted in sheltered employment.

We believe the correlation of the special education least restrictive environment policy and allowing work activity clients to work with sheltered workers is very valid. The passage of S. 2634 will significantly enhance the opportunity for work activity clients to develop and improve as workers as the LRE policy in P.L. 94-142 allows handicapped students to develop and improve in public schools.

Among the foremost goals of our organization is the improvement of employment proficiency and employment opportunities for mentally retarded persons. Such a goal will foster better earnings and more independence for mentally retarded citizens. Increased income in sheltered employment may very well lead to employment in outside industry and reduce the need for expensive government benefits. There is now sufficient data from several sources to clearly indicate that the productive capacity of severely retarded persons can be improved with sound training practices, including the opportunity to work alongside higher functioning workers.

Most mentally retarded people have dreams of financial security and independence as do other non-handicapped Americans. This bill, S. 2634, if enacted, will prove a most valuable mechanism for work activity clients to improve their productivity, hence their earning capacity. We therefore urge prompt enactment of this measure. Advocates on behalf of handicapped citizens want it, the Departments of Labor and Health and Human Services approve it.

The ARC urges this Committee to pass this important bill now to enable handicapped citizens an opportunity to prosper and become better contributors to our society. We greatly appreciate your efforts on behalf of our nation's disabled citizens.

Senator NICKLES. Thank you very much. I appreciate your statement.

Mr. Goldman.

Mr. GOLDMAN. Mr. Chairman, I want to thank you on behalf of the National Association of Jewish Vocational Services and its member agencies for this opportunity to testify here before you.

NAJVS is particularly interested in this amendment and the sense of reality with which it addresses the aspect of work activity centers. NAJVS is the coordinating body of Jewish vocational service agencies which, for more than 100 years, have been providing a wide array of Vocational and manpower-related services to both Jewish and non-Jewish populations across the country, and to nondisabled and disabled populations.

Nearly 11 million individuals have been served by programs administered by Jewish vocational service agencies. Each year for the past 5 years, over 200,000 people have been involved in these programs, of which the following are examples: Vocational evaluation and assessment; work sample evaluation; work adjustment training; vocational skills training in a variety of occupational areas; career counseling and development services; on-the-job skills training programs; skills retraining and upgrading; job development and job placement; corporate services, including out-placement assistance; vocational rehabilitation of the handicapped and severely handicapped, including the physically and mentally disabled; day training and day treatment services for the mentally retarded and psychiatrically impaired; remedial services, including job-related education, high school equivalency, and English as a second language, as well as community adjustment programs and group residence programs and intermediate care facilities for the mentally retarded.

In addition to these direct services which the agencies provide, they are linked to a system of agencies under the umbrella of the Council of Jewish Federations, which is comprised of 250 Jewish federations in the United States and Canada, and through which the Jewish vocational service agencies are able to work closely with Federation agencies such as child care agencies, family care agencies, community centers, hospitals, and institutions and homes for the elderly.

The ultimate goal of these programs is to afford the individuals participating the fullest opportunity to make the best vocational, social, and community adjustment possible. This goal is as relevant and achievable for severely handicapped individuals as for the well population that we serve, albeit in many instances over a considerably longer period of time.

The most effective way to achieve this goal is to utilize existing services in innovative ways and to develop other services and programs which will enable a severely handicapped individual to take his place as a full participating member of the community. It is essential that a degree of flexibility be maintained in order to assist a severely handicapped individual to improve his functional work capacities.

The amendment under consideration, which would allow the permissive employment of handicapped and severely handicapped individuals in common areas, would remove an impediment to the po-

tential forward movement and progress of severely handicapped persons.

If we view the goal of competitive employment as appropriate for at least some portion of the severely handicapped population, then they must be permitted the opportunity to do three things: One, to work in a setting with individuals who function at different levels, since the world of work is not separated into disability groups; two, to work with people who can be role models in terms of work, social, and personal behaviors; and, three, to work on subcontracts and contracts of higher levels and earning potential.

Oftentimes, we have preconceived notions about what severely handicapped people can and cannot do, and these notions, regretfully, can become for the individuals a self-fulfilling prophecy.

This amendment not only meets the requirement of section 504 of the Rehabilitation Act of 1973, but it will also send a message to the severely handicapped individuals whom we serve that we do believe in the American way and that everyone does have the opportunity to accomplish and work to the best of their ability.

Therefore, the National Association of Jewish Vocational Services supports this amendment, since it would, in a legal, legislative way, provide a practical, professionally sound approach to the rehabilitation of severely handicapped individuals.

I want to thank you for the opportunity to appear before you, and trust that you will give positive consideration to the passage of this amendment.

[The prepared statement of Mr. Goldman follows:]

TESTIMONY

Before the Senate Subcommittee on Labor

Wednesday, August 11, 1982 (9:30 AM)

ON

S.2634

(A bill to amend section 14(c)(3) of the Fair Labor Standards Act of 1938, to permit the employment of handicapped and severely handicapped individuals in common areas, to permit the employment of handicapped individuals in demonstration projects.)

BY

Harvey P. Goldman
Executive Director

NATIONAL ASSOCIATION OF JEWISH VOCATIONAL SERVICES

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NATIONAL ASSOCIATION OF JEWISH VOCATIONAL SERVICES (NAJVS)

TESTIMONY ON S.2634,

A Bill to Amend Section 14 (c)(3) of the
Fair Labor Standards Act of 1938

Mr. Chairman and Members of the Committee, I want to thank you on behalf of the National Association of Jewish Vocational Services and its member agencies for this opportunity to testify before you today.

The National Association of Jewish Vocational Services is particularly interested in this amendment and the sense of reality with which it addresses the aspect of Work Activity Centers. NAJVS is the coordinating body for Jewish Vocational Service agencies which, for more than 100 years, have been providing a wide array of vocational and manpower related services to both Jewish and non-Jewish populations across the country. Nearly eleven million individuals have been served by programs administered by Jewish Vocational Service agencies. Each year for the past five years, over 200,000 people have been involved in these programs of which the following are examples:

vocational evaluation and assessment; psychological testing; work sample evaluation; work adjustment training; vocational skills training in a variety of occupational areas; career counseling and development services; on-the-job skills training programs; skills retraining and upgrading; job development and job placement; labor market surveys; corporate services including outplacement assistance; vocational rehabilitation of the handicapped and severely

handicapped including the physically and mentally disabled, disadvantaged youth and adults and the well and disabled elderly; day training and day treatment services for the mentally retarded; remedial services including job related education, English as a Second Language and High School Equivalency; speech, audiological, occupational, physical and recreational therapy; activities of daily living and community adjustment programs, as well as group residence programs and intermediate care facilities for the mentally retarded.

In addition to these direct services which the agencies provide, they are linked to a system of agencies under the umbrella of the Council of Jewish Federations, which is comprised of 250 Jewish Federations in the United States and Canada, and through which the Jewish Vocational Service agencies are enabled to work closely with Federation agencies such as child care, family service, community centers, hospitals, and institutions and homes for the elderly.

The ultimate goal of these programs is to afford the individuals participating the fullest opportunity to make the best vocational, social and community adjustment possible. This goal is as relevant and achievable for severely handicapped individuals as for the well population that we serve albeit, in many instances, over a considerably longer period of time.

The most effective way to achieve this goal is to utilize existing services in innovative ways and to develop other services and programs which will enable a severely handicapped individual to take his place as a full, participating member of the community. It is essential that a degree of flexibility be maintained in order to assist a severely handicapped individual to improve his functional work capacities.

The amendment under consideration, which would permit the permissive employment of handicapped and severely handicapped individuals in common areas, would remove an impediment to the potential forward movement and progress of severely handicapped individuals. If we view the goal of employment as appropriate for at least some portion of the severely handicapped population, then they must be permitted the opportunity to do three things:

1) to work in a setting with individuals who function at different levels, since the world of work is not separated into disability groups,
2) to work with people who can be role models in terms of work, social and personal behaviors, and
3) to work on subcontracts and contracts of higher levels and earning potential.

Oftentimes we have preconceived notions about what severely handicapped people can and cannot do, and these notions regretfully can become for

the individuals a self-fullfilling prophecy. This amendment not only meets the requirement of Section 504 of the Rehabilitation Act of 1973, but it also will send a message to the severely handicapped individuals whom we serve that we do believe in the American way and that everyone does have the opportunity to work and accomplish to the best of their ability.

Therefore, the National Association of Jewish Vocational Services supports this amendment since it would in a legal, legislative way provide a practical, professionally sound approach to the rehabilitation of severely handicapped individuals.

I want to thank you again for the opportunity to appear before you, and trust that you will give positive consideration to the passage of this amendment.

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NAJVS works closely with and maintains affiliations with Council of Jewish Federations, American ORT, HIAS, Hadassah, the Association of Jewish Family and Children's Agencies and other organizations.

NAJVS

(8/3/82)

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Senator NICKLES. Thank you, Mr. Goldman.

I might ask both of you to respond. Do you think that by passage of this amendment, this in any way will be taking advantage—that the organization or association that is employing the handicapped would take advantage of, say, the individuals in the sheltered workshop? Would they be taking advantage of them by integrating in the work activity center people?

Mr. GRAY. I know of no evidence of that, Senator, and I certainly do not feel that it would in any way be taking advantage of those people. To the contrary, I believe it would create more opportunities and more flexibility to those who are, at that point, more limited in productivity.

I think a parallel is to raise the question of when we go out to the competitive labor market and seek to place persons who are handicapped into jobs in the competitive labor market. I wonder how we would react if the competitive labor market stated they did not want to hire handicapped people because they felt their presence in that marketplace would be taking advantage of the nonhandicapped workers.

I think we would react very strongly to that. And I think we need to be consistent in our own operations to ensure that we create options for all handicapped people to have maximum opportunities.

Senator NICKLES. Would you care to address that, Mr. Goldman?

Mr. GOLDMAN. I think that speaking for the Jewish vocational services system, the development of the system was from the beginning, to provide employment and counseling services to handicapped and nonhandicapped individuals. Every program that is brought on board, whether it be skills training or a sheltered workshop or a work activity center, is an effort to develop the functioning of the individual we are serving to the highest possible level.

The individual services that we provide are really along a continuum of services, designed to remove impediments or potential impediments to the progress of an individual. This legislation would provide the transition which does not exist now, and that is the ability to work next to people from whom the severely disabled individual can benefit.

There is much to be said for the less severely handicapped individual who can also benefit from being permitted to present the role model there. There have been demonstration projects under the old Vocational Rehabilitation Administration and conducted by JVS's which show that the "buddy systems" between severely and less severely disabled have been fruitful for both groups of people.

To answer your question specifically, we are not in the business of running workshops or work activity centers because we have a product to produce or we think that that is a way of making money for the agency. These services exist to serve individuals who cannot be served in any other fashion.

Senator NICKLES. I will ask this to either of you. When you are soliciting contracts, are you soliciting contracts with the idea of, "If we do so much in contracts, we can earn the agency or association so much money," or are you trying to solicit contracts so that here you have *x* number of individuals and this will give them some

training and opportunity for them to learn something to assist them in their individual development?

Mr. GOLDMAN. It is a concerted effort, not only with contracts and subcontracts but with all of our programs, to bring into an agency the services that are needed by the individuals, rather than bringing in a product or a subcontract and then going out and trying to find the people to do it.

We are trying to deal with people in need, and this is one of the mechanisms with which to do it.

Mr. GRAY. Yes, I would agree that we view the work activity center and workshop operation as a human service organization, and that the contract work performed there is a means to an end—an end in terms of training people who are handicapped and an end in terms of providing employment to people who are handicapped.

Certainly, when we price contracts, sound business practices must prevail because, like any operation, if we consistently underprice, we will not be around to serve people any longer. To be sure, when those sound business practices are observed, revenue is generated to turn back into services for people who are handicapped.

I frankly think that the example of a $55 or $60 million endowment is indeed rare, and I would certainly like to have the name of that individual to find out what his secret of success is.

Senator NICKLES. I had some personal involvement with a workshop in my home town in Oklahoma; it was the Kay Council for Retarded Children. We built a workshop. We have a number of younger individuals, but we also had some people that were entering their later teens and twenties that we were trying to help progress.

That was the idea behind the workshop. We scouted and were somewhat successful in finding some contracts for them to progress. Some have progressed into the private sector, and I think, have become good role models for other persons that were either mentally or severely handicapped to be able to pull themselves up.

I have seen from personal experience that it can be a fruitful and a very beneficial experience to everyone concerned.

Mr. Gray, you talked about one of the activities where the individuals were working on bicycle brakes. I tried to do that not too long ago unsuccessfully, so I compliment them on their achievements.

Do either of you have any other comments that you wish to make?

Mr. GOLDMAN. Just two. The relationships that go on in a rehabilitation center is on a two-way street. As a matter of fact, the process of worker-management relations has been formalized, particularly through the Commission on Accreditation of Rehabilitation Facilities, which requires that agencies which are accredited by the Commission establish ongoing, working management-client committees to deal with many of the issues that would ordinarily occur in other kinds of work settings.

The second is that therapeutic services in many agencies are not only provided in work activity centers, *per se*. There are many agencies, including those who testified before, which provide physi-

cal therapy, occupational therapy, remedial education, activities of daily living training, and community adjustment programs.

So, to look at the therapeutic aspect of work activity centers as if that were the only kind of treatment that goes on within a rehabilitation agency is to lose sight of the fact that there are many other supportive services that are provided.

Senator NICKLES. Good point. Gentlemen, we thank you both for your input and your expertise, and also for your support of this legislation.

At this point we will insert in the record all statements of those who could not attend and other material submitted for the record.

[The material referred to follows:]

STATEMENT OF

NATIONAL INDUSTRIES FOR THE BLIND

PROVIDED TO

THE SUBCOMMITTEE ON LABOR
OF THE
SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

ON

S. 2634

TO AMEND THE FAIR LABOR STANDARDS ACT

National Industries for the Blind (NIB) is most pleased to be afforded an opportunity to submit comments regarding S. 2634. At the outset we want to commend you for your efforts to insure that severely and multi-handicapped individuals are afforded the opportunity to make their maximum contribution to society. NIB is most interested in this particular legislation because it directly impacts upon ever-growing numbers of persons served in workshops for the blind who also have severe and multiple disabilities in addition to blindness.

National Industries for the Blind is the Central Nonprofit Agency representing workshops serving blind persons under the provisions of Public Law 92-28, the Javits-Wagner-O'Day Act. As such, National Industries for the Blind represents 103 workshops throughout the country which provide employment services to over 5,000 blind and multihandicapped blind persons.

During Fiscal Year 1931 (ended September 30, 1981), there were 24 Work Activities Centers (WACs) operated by NIB-associated workshop programs. These 24 provided a variety of therapeutic activities, one of which was paid work for 647 blind persons with severe and multiple handicaps. The attached "Profile of a Work Activities Center Client" and "Profile of Services in a Work Activities Center" will provide additional documentation concerning both the nature of blind persons served in WACs and the ancillary and support services required by such persons.

These profiles are the results of a survey conducted by NIB in 1979. At that time, there were 16 WACs operated by NIB-associated

workshops. In 1980, there were 20 such programs, and in 1981, there were 24. Two additional agencies have developed such programs in the early part of 1982. It is, therefore, clear that there is an ever-increasing need for programs like Work Activities Centers which are concerned with the growth and development of the total person.

Workshops for the Blind associated with National Industries for the Blind which operate Work Activities Centers have built-in systems for upward mobility for persons served in such programs. Because Work Activities Centers are not independent operations, but part of larger workshop programs, there is opportunity for Work Activities Center clients to move into the Regular Workshop Program once there is no longer a need for the intensive personalized services provided in the WAC.

A prime example of this upward mobility is provided in the case of the Work Activities Center (Opportunities Unlimited) operated by the Royal Maid Association for the Blind, Inc., in Hazlehurst, Mississippi. Royal Maid is the wholly-owned demonstration workshop of National Industries for the Blind.

Opportunities Unlimited is a Work Activities Center located on the campus of the Ellisville State School in Ellisville, Mississippi. This School is a State of Mississippi institution for severely and profoundly retarded persons located approximately 100 miles south of Hazlehurst. The operation is a joint program of both the School and Royal Maid. The raw materials for manufacture, technical assistance,

management functions, and vocational training are provided by Royal Maid. The space and staff for personal adjustment services and all other ancillary and support services are provided by the Ellisville State School. This Work Activities Center Program serves those residents of the School who are legally blind and exhibit additional disabilities of retardation, deafness, and/or other severely limiting conditions.

The intensive individualized services provided at Opportunities Unlimited has enabled a number of WAC clients to develop a higher level of life skills. Therefore, Royal Maid operates a supervised living facility in the Hazlehurst community (ALPHA HOUSE) for those persons who have reached a point in their rehabilitation where they can leave the State institution and be served in the Regular Workshop Program at the main Royal Maid facility. Those persons who "graduate" from ALPHA HOUSE are then assisted in finding independent living arrangements in the Hazlehurst community. The need is such that a second ALPHA HOUSE is now planned for development.

In essence, the separation of the Work Activities Center from the Regular Workshop Program has enhanced the upward mobility of severely limited blind persons because the emphasis in the Work Activities Center can remain on the needs of the individual in order to maximize his/her overall adaptive skills.

It must be remembered that blindness interferes with the acquisition and assimilation of information, while retardation interferes with

the processing of information. While each is a most severe handicap, the combination is greater than the sum of the parts and can be a devastating disability. The fact that workshops for the blind are serving increasing numbers of such persons is evidenced by the most recent statistics available from the Rehabilitation Services Administration. In 1980, more than one-half of all blind persons referred for workshop services by State agencies for the blind had a secondary handicap besides blindness. Of the total referred, 24.3% were mentally retarded. A study conducted in 1972 by the American Foundation for the Blind stated that 75% of children who were blind and retarded also had a third disability. Those children are now of working age. The intensity of life services which they require simply cannot be provided in a Regular Workshop setting with its much more rigorous production demands.

A survey recently conducted by National Industries for the Blind of its associated workshops which operate Work Activities Centers or are contemplating such programs clearly indicates a concensus opinion in support of the present Department of Labor requirement for separation of Work Activities Centers and inclusion of therapeutic activities in a specialized setting. While recognizing that some flexibility will benefit certain individual clients, these agencies have stated that a specialized program allows for greater individualized service and client progress.

Workshops for the blind have been able to provide a level of work in the regular programs which, in most cases, is beyond the abilities of

the clients served in the WACs. In workshops serving the blind, a system which places a severely limited WAC client in the Regular Program may prove detrimental to both the WAC client and the regular client and the WAC client may suffer from an inability to meet the production and environmental demands of the Regular Workshop Program. It was mentioned in the survey conducted by NIB that workshops serving the blind felt the regular program clients may have earnings diminished if the WAC client must leave the work environment, thereby interrupting the work flow.

National Industries for the Blind is concerned with the proposed legislation in principle because it does not require the provision of ancillary or support services to persons covered by Work Activities Centers (WACs) or Work Activities Programs (WAPs) as at present; and does not state specifically that integration is on a permissive basis. However, Senator Nickles in his introductory remarks did state permissive integration would apply.

Notwithstanding the above, National Industries for the Blind would not object to the proposed legislation if the following points are included:

1. The proposed bill states that the integration of persons covered by WAC or WAP is on a permissive basis in order that each agency together with the client can determine the best program for the blind person.

2. All sheltered workshops are required to provide ancillary or support services to persons covered by WAC or WAP and this is so stated in the bill.

3. Workshops for the blind are permitted to continue to provide specialized services to persons covered by WAC or WAP, as at present, in addition to providing a paid work experience.

National Industries for the Blind wishes to express its appreciation to the members of the Subcommittee and its Chairman, The Nonorable Donald S. Nickles for permitting us to submit these comments for the record.

PROFILE OF A WORK ACTIVITIES CENTER CLIENT

The typical client that receives services in any one of the 16 WACs associated with NIB is primarily a multihandicapped blind person with severe limitations. Categorically, there exists two distinct groupings of WAC clients. The first group consists of mostly young de-institutionalized adults who often possess a secondary diagnosis of mental retardation or emotional problems. The second group consists mostly of the elderly blind who also possess a secondary disability, although it usually manifests itself in the form of some physical handicap or emotional problem. In both groups there often is a third or fourth disability which impairs functioning even further. The results of the multihandicapping conditions typically

leaves the individual with such a functional deficit that his or her production is inconsequential. Therefore, many services must be incorporated into these programs so as to maximize the person's ability to function even in this sheltered environment.

PROFILE OF SERVICES IN A WORK ACTIVITIES CENTER

Agencies which operate WAC programs must often provide adjunct services which may not be a part of ordinary sheltered employment programs. From a survey conducted of the 16 WACs associated with NIB, it was discovered that the following services are provided to the clients in addition to employment services:

1. Transportation is provided by 13 of the 16 agencies on a non-fee basis to the WAC clientele. This is due to the inability of such clientele to travel independently.

2. Therapeutic recreational activities are included as part of the WAC program in 15 of the 16 agencies surveyed.

3. Educational instruction is provided mostly on an as needed basis in 14 of the 16 agencies surveyed.

4. Activity of Daily Living Skills are provided as part of the WAC program in 14 of the 16 agencies surveyed.

5. Mobility training is included as part of the WAC program

in all of the 16 agencies surveyed. However, most agencies contacted stated that mobility training consisted of more orientation to the immediate surroundings than in preparation for independent travel, as the clientele is often not ready for such independent traveling.

6. Communication Skills are provided as part of the WAC program in 14 of the 16 agencies surveyed.

7. Professional counseling is provided as part of the WAC program in 14 of the 16 agencies surveyed.

8. Medical support is provided in a variety of disciplines, e.g. general medical, opthalmological, etc., and from a variety of community resources; however, 9 of the 16 agencies surveyed provide medical support in their agencies.

9. Psychological services are provided usually on an as needed basis with the psychological consultation purchased when indicated; however, 10 of the 16 agencies surveyed provide direct psychological support services in their agencies.

10. At least 5 of the 16 agencies have identifiable subsidized meal programs. However, it should be known that some of the agencies subsidized their cafeteria program through general agency funds. One of the 5 above WAC programs provides both breakfast and lunch.

11. Housing is provided directly by 2 of the 16 WAC programs surveyed. However, 15 of the 16 WACs surveyed provide for cooperative arrangements with community resources for housing or can identify housing assistance programs. Housing assistance programs seek out third party funding so that the client is not burdened with an unmanageable cost.

12. Nine of the 16 agencies guarantee a minimum hourly rate of pay, or daily rate of pay, or piece rate whichever is highest. However, these rates of pay continue to be provided when clients are engaged in activities other than paid work. These minimum guaranteed rates range from 22¢ per hour to 80¢ per hour. Two WACs guarantee a minimum of $2.00 per day and 1 WAC program guarantees twice the hourly regular shop certificate rate per day.

Senator NICKLES. The committee will be adjourned.
[Whereupon, at 11:32 a.m., the Subcommittee was adjourned.]

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